

District of Columbia Code

1981 Edition



Property of the District of Columbia Government

DISTRICT OF COLUMBIA CODE

ANNOTATED

1981 EDITION

With Provision for Subsequent Pocket Parts

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE,
RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT
SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF
COLUMBIA BY REASON OF BEING GENERAL AND PERMA-
NENT LAWS OF THE UNITED STATES), AS OF
DECEMBER 31, 1994, AND NOTES TO DECISIONS THROUGH MARCH 1, 1995

VOLUME 4A

1995 REPLACEMENT

TITLE 7—HIGHWAYS, STREETS, BRIDGES

TITLE 8—PARKS AND PLAYGROUNDS

TITLE 9 — PUBLIC BUILDINGS AND GROUNDS

TITLE 10 — WEIGHTS, MEASURES, AND MARKETS

TITLE 11 — ORGANIZATION AND JURISDICTION OF THE COURTS

TITLE 12 — RIGHT TO REMEDY

TITLE 13 — PROCEDURE GENERALLY

TITLE 14 — PROOF

TITLE 15 — JUDGMENTS AND EXECUTIONS; FEES AND COSTS

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USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Code intended to increase the usefulness of the Code to the user.



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* Title has been enacted as law.

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§ 7-101. Control and repair of streets.

The Mayor of the District of Columbia shall have entire control of, and the Council of the District of Columbia shall make all regulations which it shall deem necessary for keeping in repair, the streets, avenues, alleys, and sewers of the City, and all other works which may be intrusted to the Mayor's charge by the Congress. (R.S., D.C., § 77; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2; 1973 Ed., § 7-101.)

Cross references. — As to rules and regulations for protection of life, health, and property, see § 1-319.

As to cleaning streets and repairing and cleaning sewers, see § 1-329.

As to repair of streets sought to be abandoned, see § 7-114.

As to appropriations for removal of snow and ice, see § 7-907.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(150) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

District officials must regard title. — The District of Columbia officials responsible for the planning and construction of highway projects in the District lack the authority to proceed with the planning and construction of 4 links of a proposed District of Columbia freeway system without regard for this title. *District of Columbia Fed'n of Civic Ass'ns v. Airis*, 391 F.2d 478 (D.C. Cir. 1968).

Compliance with hearing requirements. — Congress, having accorded all citizens the right to participate in the determination of federally financed highway projects through public hearings, could not, without adequate justification, discriminate against the citizens of the District of Columbia by directing that the construction of a bridge in the District proceed without compliance with hearing requirements. *District of Columbia Fed'n of Civic Ass'ns v. Volpe*, 434 F.2d 436 (D.C. Cir. 1970).

§ 7-102. Jurisdiction over public roads and bridges.

The Mayor of the District of Columbia shall have the care and charge of, and the exclusive jurisdiction over, all the public roads and bridges, except such as belong to and are under the care of the United States, and except such as may be otherwise specially provided for by Congress. (R.S., D.C., § 247; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2; 1973 Ed., § 7-102.)

Cross references. — As to duty to obtain street right-of-way through burial ground, see § 1-915.

As to power of administrator of Alley Dwelling Act over streets and alleys, see § 5-103.

As to authority to change names of streets and highways, see §§ 7-106, and 7-111.

As to highway plans, see §§ 7-107 to 7-138.

As to Council authorization to name public spaces, see § 7-451.

As to duplicative names prohibited for public spaces, see § 7-454.

As to jurisdiction and control over bridges, see § 7-501.

As to control and repair bridges, see §§ 7-501 and 7-502.

As to jurisdiction and control of Highway Bridge, see § 7-507.

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As to transfer of certain lands from public park system, see § 8-114.

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As to obstructing public highways, see §§ 22-3120 to 22-3122.

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As to traffic regulation for vehicular traffic, see §§ 40-701 to 40-725.

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As to construction and type of rails and removal of street railway tracks, see §§ 44-206, 44-209, and 44-211.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Right of access is property right, subject to reasonable regulation, which cannot be taken away without just compensation. *Brownlow v. O'Donoghue Bros.*, 276 F. 636 (D.C. Cir. 1922).

District has primary responsibility for maintaining streets and sidewalks in reasonably safe condition, regardless of who owns the fee in such streets and sidewalks, in the absence of special circumstances such as the accumulation of snow or ice or an improvement of the way in question by the United States. *Conner v. United States*, 309 F. Supp. 446 (D.D.C. 1970).

Liability of District for negligence of officers. — The District is responsible to individuals for personal injuries sustained as a result of the negligence of its officers in the maintenance of the streets, avenues, and sidewalks. *District of Columbia v. Woodbury*, 136 U.S. 450, 10 S. Ct. 990, 34 L. Ed. 472 (1890).

Cited in *Bauman v. Ross*, 167 U.S. 548, 17 S. Ct. 966, 42 L. Ed. 270 (1897); *Leary v. District of Columbia*, 166 F. Supp. 542 (D.D.C. 1958).

§ 7-103. Abutment of Highway Bridge.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 725, 30 DCR 148.

Legislative history of Law 4-201. — Law 4-201, the "Street and Alley Closing and Acquisition Procedures Act of 1982," was introduced in Council and assigned Bill No. 4-341, which

was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respec-

tively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-285 and transmitted to both Houses of Congress for its review.

§ 7-104. Certain public roads declared public highways.

All public roads within said District, outside the limits of Washington and Georgetown, which were duly laid out or declared and recorded as such on June 22, 1874, are public highways. (R.S., D.C., § 246; 1973 Ed., § 7-104.)

Cross references. — As to abolition of Georgetown as separate and distinct city and incorporation of it as part of City of Washington, see § 1-107. As to establishment of new roads in subdivision of land, see § 1-914.

§ 7-105. Boundaries of public highways to be permanently marked.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 709, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-103.

§ 7-106. Council may change names of streets when 2 streets have same name.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 702, 30 DCR 148.

Cross references. — As to duplicative names prohibited for public spaces, see § 7-454. **Legislative history of Law 4-201.** — See note to § 7-103.

§ 7-107. Permanent highway plan — Width of highways.

The Mayor of the District of Columbia is hereby authorized and directed to prepare a plan for the extension of a permanent system of highways over all that portion of said District not included within the limits of the Cities of Washington and Georgetown. Said system shall be made as nearly in conformity with the street plan of the City of Washington as the Council of the District of Columbia may deem advisable and practicable. The highways provided in such plans shall not in any case be less than 90 feet nor more than 160 feet wide, except in cases of existing highways, which may be established of any width not less than their existing width and not more than 160 feet in width. (Mar. 2, 1893, 27 Stat. 532, ch. 197, § 1; 1973 Ed., § 7-108.)

Cross references. — As to abolition of Georgetown as separate and distinct city and incorporation of it as part of City of Washington, see § 1-107. As to duties of Surveyor, see §§ 1-901 to 1-929. As to inapplicability of §§ 7-107 to 7-110 to Interstate System, see § 7-112. As to new plan, see § 7-122. As to street and alley closing procedures, see §§ 7-421 to 7-435. As to width of pavement of streets, see § 7-618. As to authorization of minor changes in highway width in connection with resurfacing or other street improvements, see § 7-619. **Section references.** — This section is re-

ferred to in §§ 1-2007, 5-819, 7-108, 7-112, 7-114, 7-116, 7-118, and 7-122.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(153) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Section inapplicable. — This section does not apply to highway improvements constructed with federal aid. D.C. Fed'n of Civic Ass'ns v. Airis, 275 F. Supp. 533 (D.D.C. 1967).

Federal-aid highway legislation is not inconsistent with this section. District of Columbia Fed'n of Civic Ass'ns v. Airis, 391 F.2d 478 (D.C. Cir. 1968).

Sections 7-107 to 7-110 were intended to regulate interstate expressways. District of Columbia Fed'n of Civic Ass'ns v. Airis, 391 F.2d 478 (D.C. Cir. 1968).

Effect of procedures. — The procedures set out in §§ 7-107 to 7-110 are even more important for regulating the "wide interstate expressways" for these projects generally affect more people and larger areas of the District than any other type of street and, therefore, are potentially more destructive of aesthetic values and fundamental property rights. District of Columbia Fed'n of Civic Ass'ns v. Airis, 391 F.2d 478 (D.C. Cir. 1968).

District officials must regard title. — The District of Columbia officials responsible for the planning and construction of highway projects

in the District are not authorized by Congress to disregard the requirements of this title in the planning and construction of 4 links of the proposed District of Columbia freeway system. District of Columbia Fed'n of Civic Ass'ns v. Airis, 391 F.2d 478 (D.C. Cir. 1968).

Standing to sue. — Taxpayers of the District of Columbia had standing to maintain a suit against the District of Columbia officials, but not against federal officials, to restrain expenditure of funds for proposed highway projects to be constructed with municipal and federal funds. D.C. Fed'n of Civic Ass'ns v. Airis, 275 F. Supp. 533 (D.D.C. 1967).

Property owners who owned property the value of which might be reduced by proposed highway projects did not have any legal personal rights that were being adversely affected, and such owners did not have standing to maintain suit against District of Columbia officials to restrain expenditure of municipal funds for proposed highway projects. D.C. Fed'n of Civic Ass'ns v. Airis, 275 F. Supp. 533 (D.D.C. 1967).

Users of public parks within the sites of proposed highway projects who contended that their rights to use the parks would be interfered with by the construction had no rights, separate and apart from those of the rest of the public, and the park users had no standing to sue to restrain the District of Columbia officials from expending municipal funds for a proposed highway project. D.C. Fed'n of Civic Ass'ns v. Airis, 275 F. Supp. 533 (D.D.C. 1967).

Civic associations did not have standing to sue District of Columbia officials to restrain expenditure of municipal funds for highway projects. D.C. Fed'n of Civic Ass'ns v. Airis, 275 F. Supp. 533 (D.D.C. 1967).

The central committee of a political party which was not incorporated was not an entity and had no capacity to sue or be sued and could not maintain action against District of Columbia officials to restrain expenditure of municipal funds for construction of proposed highway projects. D.C. Fed'n of Civic Ass'ns v. Airis, 275 F. Supp. 533 (D.D.C. 1967).

Cited in Rudolph v. Warwick, 10 F.2d 993 (D.C. Cir. 1926); Wilkinson v. Dougherty, 24 F.2d 1007 (D.C. Cir.), cert. denied, 278 U.S. 603, 49 S. Ct. 10, 73 L. Ed. 531 (1928).

§ 7-108. Same — Preparation by Mayor; maps.

The said plans shall be prepared from time to time in sections, each of which shall cover such an area as the Mayor of the District of Columbia may deem advisable to include therein, and it shall be the duty of the Mayor in preparing such plan by sections, as far as may be practicable, to select first such areas as are covered by existing suburban subdivisions not in conformity with the general plan of the City of Washington. The Mayor in making such plans shall

adopt and conform to any then existing subdivisions which shall have been made in compliance with the provisions of the Act of Congress approved August 27, 1888, entitled "An act to regulate the subdivision of land within the District of Columbia" (25 Stat. 451), or which shall, in the opinion of the Mayor, conform to the general plan of the City of Washington: Provided, however, that no place or street extending no farther than from 1 principal street to another, which has been opened under the direction of the Mayor, or in conformity with any subdivision approved by them prior to August 27, 1888, and recorded, and which was on March 2, 1893, paved with asphalt or other sheet pavement, shall be altered, affected, or interfered with by any plan adopted or anything done under or by virtue of §§ 7-107 to 7-111. Whenever the plan of any such section shall have been adopted by the Mayor, he shall cause a map of the same to be made showing the boundaries and dimensions of and number of square feet in the streets, avenues, and roads established by him therein; the boundaries and dimensions of and number of square feet in each, if any, of the then existing highway in the area covered by such map, and the boundaries and dimensions of and number of square feet in each lot of any then existing subdivision owned by private persons; and containing such explanations as shall be necessary to a complete understanding of such map. In making such maps the Mayor is further authorized to lay out at the intersections of the principal avenues and streets thereof circles or other reservations corresponding in number and dimensions with those existing on March 2, 1893, at such intersections in the City of Washington. A copy of such map, duly certified by the Mayor, shall be delivered to the National Capital Planning Commission, which shall make such alterations, if any, therein, as it shall deem advisable, keeping in view the intention and provisions of §§ 7-107 to 7-111, and the necessity of harmonizing as far as possible the public convenience with economy of expenditure; and if such Commission shall see fit, it may cause to be made a new map in place of the one submitted to them. When such Commission, or a majority thereof, shall have come to a final determination in the matter, it shall approve in writing the map which it shall adopt, and shall deliver it to said Mayor of the District of Columbia, and the same shall at once be filed and recorded in the Office of the Surveyor of the District of Columbia, and after any such map shall have been so recorded no further subdivision of any land included therein shall be admitted to record in the Office of the Surveyor of said District, or in the Office of the Recorder of Deeds thereof, unless the same be first approved by the Mayor and be in conformity to such map. Nor shall it be lawful when any such map shall have been so recorded for the Mayor of the District of Columbia, or any other officer or person representing the United States or the District of Columbia, to thereafter improve, repair, or assume any responsibility in regard to any abandoned highway within the area covered by such map, or to accept, improve, repair, or assume any responsibility in regard to any highway that any owner of land in such area shall thereafter attempt to lay out or establish, unless such landowner shall first have submitted to the Mayor a plat of such proposed highway and the Mayor shall have found the same to be in conformity to such map, and shall have approved such plat and caused it to be recorded in the Office of said Surveyor. (Mar. 2, 1893, 27 Stat. 532, ch. 197, § 2; 1973 Ed., § 7-109.)

Cross references. — As to Surveyor of District, see §§ 1-901 to 1-929.

As to recording maps and plats, see § 1-906.

As to inapplicability of §§ 7-107 to 7-110 to Interstate System, see § 7-112.

Section references. — This section is referred to in §§ 1-2007 and 7-411.

References in text. — “Section 7-111”, referred to in the second and fifth sentences, was repealed by § 711 of D.C. Law 4-201, effective March 10, 1983.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions, powers, and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

Section is inapplicable to highway improvements constructed with federal aid. D.C. Fed’n of Civic Ass’ns v. Airis, 275 F. Supp. 533 (D.D.C. 1967).

Sections 7-107 to 7-110 were intended to regulate interstate expressways. District of Columbia Fed’n of Civic Ass’ns v. Airis, 391 F.2d 478 (D.C. Cir. 1968).

Effect of procedures. — The procedures set out in §§ 7-107 to 7-110 are even more important for regulating the “wide interstate expressways”, for these projects generally affect more people and larger areas of the District than any other type of street and, therefore, are potentially more destructive of aesthetic values

and fundamental property rights. District of Columbia Fed’n of Civic Ass’ns v. Airis, 391 F.2d 478 (D.C. Cir. 1968).

District officials must regard title. — The District of Columbia officials responsible for the planning and construction of highway projects in the District are not authorized by Congress to disregard the requirements of this title in the planning and construction of 4 links of the proposed District of Columbia freeway system. District of Columbia Fed’n of Civic Ass’ns v. Airis, 391 F.2d 478 (D.C. Cir. 1968).

Standing to sue. — The taxpayers of the District of Columbia had standing to maintain a suit against the District of Columbia officials, but not against the federal officials, to restrain against expenditure of funds for proposed highway projects to be constructed with municipal and federal funds. D.C. Fed’n of Civic Ass’ns v. Airis, 275 F. Supp. 533 (D.D.C. 1967).

Property owners who owned property the value of which might be reduced by proposed highway projects did not have any legal personal rights that were being adversely affected and such owners did not have standing to maintain suit against the District of Columbia official to restrain the expenditure of municipal funds for proposed highway projects. D.C. Fed’n of Civic Ass’ns v. Airis, 275 F. Supp. 533 (D.D.C. 1967).

The users of public parks within the sites of proposed highway projects who contended that their rights to use the parks would be interfered with by the construction had no rights, separate and apart from those of the rest of the public, and the park users had no standing to sue to restrain the District of Columbia officials from expending municipal funds for the proposed highway project. D.C. Fed’n of Civic Ass’ns v. Airis, 275 F. Supp. 533 (D.D.C. 1967).

Civic associations did not have standing to sue the District of Columbia officials to restrain the expenditure of municipal funds for highway projects. D.C. Fed’n of Civic Ass’ns v. Airis, 275 F. Supp. 533 (D.D.C. 1967).

The central committee of a political party which was not incorporated was not an entity and had no capacity to sue or be sued and could not maintain an action against the District of Columbia officials to restrain expenditure of municipal funds for the construction of proposed highway projects. D.C. Fed’n of Civic Ass’ns v. Airis, 275 F. Supp. 533 (D.D.C. 1967).

Cited in Bauman v. Ross, 167 U.S. 548, 17 S. Ct. 966, 42 L. Ed. 270 (1897).

§ 7-109. Same — Adoption of subdivision by reference.

When any such map shall have been recorded as aforesaid in the Office of the Surveyor of the District it shall be lawful for the owner of any land included within such map to adopt the subdivision thereby made by a reference thereto

and to this section in any deed or will which he shall thereafter make, and when any deed or will containing any such reference shall have been made and recorded in the proper office it shall have the same effect as though the grantor or grantors in such deed or the maker of such will had made such subdivision and recorded the same in compliance with law. (Mar. 2, 1893, 27 Stat. 533, ch. 197, § 3; 1973 Ed., § 7-110.)

Cross references. — As to Surveyor of District, see §§ 1-901 to 1-929.

Section references. — This section is referred to in § 1-2007.

Sections 7-107 to 7-110 were intended to

regulate interstate expressways. District of Columbia Fed'n of Civic Ass'ns v. Airis, 391 F.2d 478 (D.C. Cir. 1968).

Cited in Bauman v. Ross, 167 U.S. 548, 17 S. Ct. 966, 42 L. Ed. 270 (1897).

X § 7-110. Same — Entry upon property for survey authorized.

For the purpose of making surveys for such plans and maps the Mayor of the District of Columbia and his agents and employees necessarily engaged in making such surveys are authorized to enter upon any lands through or on which any projected highway or reservation may run or lie. (Mar. 2, 1893, 27 Stat. 534, ch. 197, § 4; 1973 Ed., § 7-111.)

Section references. — This section is referred to in § 1-2007.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Sections 7-107 to 7-110 were intended to regulate interstate expressways. D.C. Fed'n of Civic Ass'ns v. Airis, 391 F.2d 478 (D.C. Cir. 1968).

X § 7-111. Council authorized to name streets.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 711, 30 DCR 148.

Cross references. — As to Council authorization to name public spaces, see § 7-451.

Legislative history of Law 4-201. — See note to § 7-103.

§ 7-112. Inapplicability of §§ 7-107 to 7-111 to Interstate System.

None of the provisions of §§ 7-107 to 7-111 shall apply to any segment of the Interstate System within the District of Columbia. (1973 Ed., § 7-112a; Aug. 13, 1973, 87 Stat. 268, Pub. L. 93-87, title I, § 135.)

References in text. — “Section 7-111”, referred to in the catchline and text, was repealed by § 711 of D.C. Law 4-201, effective March 10, 1983.

§ 7-113. Abandonment or readjustment of streets to provide ground for educational, religious, or similar institutions.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 712, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-103.

§ 7-114. Use of property by owner until condemnation.

The owner or owners of land over or upon which any highway or reservation shall be projected upon any map filed under §§ 7-107 to 7-111 shall have the free right to the use and enjoyment of the same for building or any other lawful purpose, and the free right to transfer the title thereof, until proceedings looking to the condemnation of such land shall have been authorized and actually begun. And as to any highway or part of highway which by any such map is to be abandoned neither the right of those occupying or owning land abutting thereon or adjacent thereto, nor the right of the public to use such highway or part of highway, shall be affected by the filing of such map until condemnation proceedings looking to the ascertainment of the damages resulting from such proposed abandonment shall have been authorized and actually begun; nor shall the obligation of the municipal authorities to keep the same in repair be affected until they are rendered useless by the opening and improvement of new highways, to be evidenced by public notice by the Mayor of the District of Columbia. (June 28, 1898, 30 Stat. 520, ch. 519, § 5; 1973 Ed., § 7-114.)

References in text. — “Section 7-111”, referred to in the first sentence, was repealed by § 711 of D.C. Law 4-201, effective March 10, 1983.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-115. Public notice of proposed plan.

(a) At least 30 days prior to the submissions by the Mayor of the District of Columbia to the National Capital Planning Commission and to the Council of the District of Columbia for approvals of a proposed modification to the permanent system of highways, the Mayor shall provide written notice of an opportunity to submit comments on the proposed modification to:

(1) Each owner of land within the squares in which or adjacent to which the proposed modification is located, by registered mail to the address to which taxation notifications are sent by the District of Columbia Department of Finance and Revenue;

(2) Each Advisory Neighborhood Commission within whose commission area the proposed modification is located; and

(3) The public, by publishing the proposed modification in the District of Columbia Register.

(b) Copies of comments received by the Mayor shall be included in any subsequent submission by the Mayor to the Council of the District of Columbia of a resolution to consider the proposed modification to the permanent system of highways. (June 28, 1898, 30 Stat. 520, ch. 519, § 6; 1973 Ed., § 7-115; May 10, 1988, D.C. Law 7-106, § 3, 35 DCR 2170.)

Section references. — This section is referred to in § 7-122.

Legislative history of Law 7-106. — Law 7-106, the “New Streets or Alleys Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-100, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 16, 1988 and March 1, 1988, respectively. Signed by the Mayor on March 16, 1988, it was assigned Act No. 7-148 and transmitted to both Houses of Congress for its review.

Delegation of authority pursuant to D.C. Law 7-106, “New Street or Alley Amendment Act of 1988”. — See Mayor’s Order 88-162, July 11, 1988.

Approval of abandonment of highway plan. — Section 4 of D.C. Law 8-76 provided that the Council approved the abandonment of the highway plan for the portion of 42nd Street, N.W., South of W Street, N.W., as shown on the Surveyor’s plat filed under S.O. 87-51.

Procedures outlined in this title are designed to protect property rights by insuring that the highway plans are evolved democratically rather than arbitrarily. D.C. Fed’n of Civic Ass’ns v. Airis, 391 F.2d 478 (D.C. Cir. 1968).

Purpose of public hearing. — The public hearing required by this section offers the public an opportunity to participate in the administrative decision and forces the administrators to spell out the reasons for their decision. D.C. Fed’n of Civic Ass’ns v. Airis, 391 F.2d 478 (D.C. Cir. 1968).

District officials must regard title. — The District of Columbia officials responsible for the planning and construction of highway projects in the District are not authorized by Congress to disregard the requirements of this title in the planning and construction of 4 links of the proposed District of Columbia freeway system. D.C. Fed’n of Civic Ass’ns v. Airis, 391 F.2d 478 (D.C. Cir. 1968).

§ 7-116. Beatty and Hawkins’s Addition to Georgetown.

All the powers given to the Mayor and Council of the District of Columbia and others under §§ 7-107 to 7-111 shall apply to and be capable of being exercised upon and through Beatty and Hawkins’s Addition to Georgetown, where it may be necessary to connect streets in parts of the District lying outside of cities, or to connect any street in the city with streets in the District of Columbia. (Apr. 12, 1904, 33 Stat. 587, Joint Res. No. 21; 1973 Ed., § 7-116.)

References in text. — “Section 7-111,” has been repealed by § 711 of D.C. Law 4-201, effective March 10, 1983.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(154,

156) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-117. Acceptance of dedicated streets; building restriction lines; right-of-way for sewers and water mains.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 713, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-103.

§ 7-118. Reversion of title upon abandonment of streets.

Upon the abandonment of any street, avenue, road, or highway, or part thereof, under the provisions of §§ 7-107 to 7-111, the title to the land contained in such abandoned portion shall revert to the owners of the land abutting thereon. (Feb. 16, 1904, 33 Stat. 14, ch. 159, § 2; 1973 Ed., § 7-118.)

Cross references. — As to closing of alleys or minor streets, see §§ 7-421 to 7-435.

been repealed by § 711 of D.C. Law 4-201, effective March 10, 1983.

References in text. — “Section 7-111”, has

§ 7-119. Resubdivision of property affected by highway plan pending condemnation proceedings.

Where any proposed street of the permanent system of highways affects any lot or block of a subdivision recorded in the Office of the Surveyor of the District of Columbia, the Mayor of the District of Columbia may, in his discretion, allow the resubdivision of such lot or block in a manner conforming to the original subdivision until such time as condemnation proceedings are begun for the opening of the proposed street affecting the land to be subdivided. (Feb. 26, 1904, 33 Stat. 51, ch. 164; 1973 Ed., § 7-119.)

Cross references. — As to Surveyor of District, see §§ 1-901 to 1-929.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-120. Street, avenue, or public thoroughfare prohibited within 1,000 feet of Naval Observatory.

No street, avenue, or public thoroughfare in the neighborhood of the buildings erected upon the United States Naval Observatory grounds, Georgetown Heights, District of Columbia, shall extend within the area of a circle described with a radius of 1,000 feet from the center of the building known as the clock room of the said Observatory. (Aug. 1, 1894, 28 Stat. 588, Joint Res. No. 40, § 1; 1973 Ed., § 7-120.)

Section references. — This section is referred to in § 7-121.

§ 7-121. Massachusetts Avenue through grounds of United States Naval Observatory.

Massachusetts Avenue, as laid down in conformity with § 7-120 upon the maps of the engineer department of the District of Columbia, through the grounds of the United States Naval Observatory is declared to be a public street in all respects as the other public streets of the District of Columbia. (Aug. 1, 1894, 28 Stat. 588, Joint Res. No. 40, § 2; 1973 Ed., § 7-121.)

§ 7-122. New highway plans authorized.

The Mayor of the District of Columbia is hereby authorized, whenever in his judgment the public interests require it, to prepare a new highway plan for any portion of the District of Columbia, and submit the same for approval, after public hearing, to the National Capital Planning Commission; such highway plans shall be prepared under §§ 7-107 to 7-115, and upon approval and recording of any such new highway plan it shall take the place of and stand for any previous plan for the portion of the District of Columbia affected. (Mar. 4, 1913, 37 Stat. 949, ch. 150; 1973 Ed., § 7-122.)

Section references. — This section is referred to in § 5-819.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions, powers, and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

Section is inapplicable to highway improvements constructed with federal aid. D.C. Fed'n of Civic Ass'ns v. Airis, 275 F. Supp. 533 (D.D.C. 1967).

Assessment of benefits against property owners without notice of hearing is a denial of due process of law. Wilkinson v. Dougherty, 24 F.2d 1007 (D.C. Cir.), cert. denied, 278 U.S. 603, 49 S. Ct. 10, 73 L. Ed. 531 (1928).

Standing to sue. — The taxpayers of District of Columbia had standing to maintain a suit against the District of Columbia officials, but not against the federal officials, to restrain the expenditure of funds for proposed highway projects to be constructed with municipal and federal funds. D.C. Fed'n of Civic Ass'ns v. Airis, 275 F. Supp. 533 (1967).

Users of public parks, within the sites of proposed highway projects, who contended that their rights to use the parks would be interfered with by the construction, had no rights, separate and apart from those of the rest of the

public, and the park users had no standing to sue to restrain the District of Columbia officials from expending municipal funds for the proposed highway project. D.C. Fed'n of Civic Ass'ns v. Airis, 275 F. Supp. 533 (1967).

The central committee of a political party, which was not incorporated, was not an entity and which lacked the capacity to sue or be sued, could not maintain an action against the District of Columbia officials to restrain the expenditure of municipal funds for the construction of proposed highway projects. D.C. Fed'n of Civic Ass'ns v. Airis, 275 F. Supp. 533 (1967).

§§ 7-123, 7-124. Certain roads authorized to be closed — Title to revert; filing of plat; apportionment of property.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 722, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-103.

§ 7-125. Subdivision to conform to plan of Washington.

No subdivision of land in the District of Columbia without the limits of the City of Washington shall be recorded in the Office of the Surveyor or in the Office of the Recorder of Deeds unless the same shall have been first approved by the Mayor of the District of Columbia and be in conformity with the recorded plans for a permanent system of highways. (Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1604; 1973 Ed., § 7-125.)

Cross references. — As to Surveyor, see §§ 1-901 to 1-929.

As to approval of subdivisions, see § 1-913.

As to Recorder of Deeds, see §§ 45-901 to 45-915.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-126. District authorized to use certain land owned by United States for street purposes.

The Mayor of the District of Columbia is authorized to use for street purposes 1,651 square feet of a tract of land known as parcel 17/93, 708 square feet of a tract of land known as parcel 18/52, and 380 square feet of a tract of land known as parcel 18/23, all for the widening of Reservoir Road, and to use for street purposes 23,779.63 square feet of a tract of land known as parcel

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28/12 for the widening of Reservoir Road and Forty-fourth Street; and to use for street purposes a strip of land 60 feet wide containing 258,750 square feet, more or less, lying immediately northeasterly of the southwesterly boundary of a tract of land known as parcel 173/23 for the widening of South Dakota Avenue; and to use for street purposes 9,000 square feet, more or less, of a tract of land known as parcel 243/15 for the extension of Trenton Street and for the widening of 4th Street Southeast; and to use for street purposes 1,521.28 square feet of lot 802, square 1932, and 3,669.88 square feet of lot 837, square 1300, for the widening of Wisconsin Avenue, all as shown on maps designated as Street Extension Maps 1150 and 1154, and Surveyor's Office Maps 1314 and 1373, on file in the Office of the Surveyor of the District of Columbia, all the above-described property herein authorized to be used for street purposes being owned by the United States of America. (Feb. 27, 1929, 45 Stat. 1341, ch. 353; 1973 Ed., § 7-126.)

Cross references. — As to Surveyor of District, see §§ 1-901 to 1-929.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-127. Relocation of Michigan Avenue authorized.

In order to relocate the line of Michigan Avenue from Franklin Street as laid down on the plan of the permanent system of highways for the District of Columbia to Lincoln Road, bordering the southeast corner of the grounds of the United States Soldiers' Home, and to straighten and shorten the route of said Avenue, the Mayor of the District of Columbia is authorized to close, vacate, and abandon the portion of Michigan Avenue known and designated as Parcel E on map filed in the Office of the Surveyor of the District of Columbia and numbered as Map 1429, containing 54,380 square feet, said part so closed, vacated, and abandoned to be transferred by said Mayor of the District of Columbia to the United States as part of the grounds of the United States Military Asylum, known as the United States Soldiers' Home. (Mar. 4, 1929, 45 Stat. 1543, ch. 682, § 1; 1973 Ed., § 7-127.)

Section references. — This section is referred to in §§ 7-130 and 7-131.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

Extension and widening of Michigan Avenue. — See the Act of April 22, 1932, 47 Stat. 135, ch. 133, §§ 1 to 5.

§ 7-128. Use of part of Soldiers' Home for street purposes.

The Mayor of the District of Columbia is authorized to use for street purposes all that part of the United States Soldiers' Home grounds designated as Parcel A, containing 57,613 square feet, and Parcel B containing 11,870 square feet, as shown on map filed in the Office of the Surveyor of the District of Columbia and numbered as Map 1429; and the proper authorities having title, control, or jurisdiction are authorized to make the necessary transfer of said parcels of land to the District of Columbia for street purposes. (Mar. 4, 1929, 45 Stat. 1543, ch. 682, § 2; 1973 Ed., § 7-128.)

Cross references. — As to Surveyor of District, see §§ 1-901 to 1-929.

Section references. — This section is referred to in §§ 7-130 and 7-131.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-129. Portion of Michigan Avenue abandoned.

The Mayor of the District of Columbia is authorized to close, vacate, and abandon the portion of Michigan Avenue known and designated as Parcel D, containing 69,336 square feet, and Parcel H, containing 7,279 square feet, as shown on map filed in the Office of the Surveyor of the District of Columbia and numbered as Map 1429, title to said parcels so closed, vacated, and abandoned to revert in fee simple to the owner or owners of the parcel numbered on the assessment records of the District of Columbia as parcel 120/1, said closing of said street and the transfer of title thereto to be upon the condition and with the express stipulation that the owner or owners of said parcel 120/1 shall dedicate to the District of Columbia for street purposes all of the parcel known and designated as Parcel F, containing 43,161 square feet, as shown on map filed in the Office of the Surveyor of the District of Columbia and numbered as Map 1429 and shall further, in consideration of the increase in area of the property of said owner or owners of said parcel 120/1 by reason of the transfers as provided herein, dedicate to the District of Columbia about 36,000 square feet of land, the location of which shall be mutually agreed upon by the Mayor of the District of Columbia and the owner or owners of parcel 120/1, and that said owner or owners of said parcel 120/1 shall transfer to the United States as part of the grounds of the United States Military Asylum, known as the United

States Soldiers' Home, all of the parcel known and designated as Parcel G, containing 1,543 square feet, as shown on said Map No. 1429 in the Office of the Surveyor of the District of Columbia: Provided, however, that the Board of Commissioners of the United States Soldiers' Home, or the proper authorities having title, control, or jurisdiction, shall transfer to the owner or owners of the parcel designated on the assessment and taxation records of the District of Columbia as parcel 120/1 all the land comprised within the parcel known and designated as Parcel C containing 4,517 square feet, as shown on map filed in the Office of the Surveyor of the District of Columbia and numbered as Map 1429. (Mar. 4, 1929, 45 Stat. 1543, ch. 682, § 3; 1973 Ed., § 7-129.)

Cross references. — As to Surveyor of District, see §§ 1-901 to 1-929.

Section references. — This section is referred to in §§ 7-130 and 7-131.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-130. Plats showing relocation of Michigan Avenue.

The Surveyor of the District of Columbia is hereby authorized to prepare the necessary plat or plats showing all parcels of land to be transferred in accordance with the provisions of §§ 7-127 to 7-131, with a certificate affixed thereon to be signed by the parties in interest making the necessary transfers; which plat and certificate, after being signed by the various interested parties and approved by the Mayor of the District of Columbia, shall be recorded upon order of said Mayor in the Office of the Surveyor of the District of Columbia; and said plat or plats, when duly recorded in said Office of the Surveyor of the District of Columbia, shall constitute a legal transfer of title of the various parcels to the parties in interest according to the provisions contained in §§ 7-127 to 7-131. (Mar. 4, 1929, 45 Stat. 1544, ch. 682, § 4; 1973 Ed., § 7-130.)

Cross references. — As to recording maps and plats, see § 1-906.

As to duties of Surveyor, see § 1-916.

Section references. — This section is referred to in § 7-131.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-131. Right-of-way over Michigan Avenue to Washington Railway and Electric Company.

The Mayor of the District of Columbia is hereby authorized, upon the straightening and shortening of Michigan Avenue as provided by §§ 7-127 to 7-131, to do any and all acts which may be necessary to give the Washington Railway and Electric Company such easement or right-of-way over said Michigan Avenue as is necessary for the proper operation of the railway lines and cars of said company over said avenue as straightened and shortened by the provisions of said sections. (Mar. 4, 1929, 45 Stat. 1545, ch. 682, § 7; 1973 Ed., § 7-131.)

Section references. — This section is referred to in § 7-130.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Consolidation of transit companies. — The Washington Railway and Electric Company and the Capital Traction Company were consolidated under the name of Capital Transit Company by the Act of January 14, 1933, 47 Stat. 752, ch. 10, § 1.

§ 7-132. Highway construction program authorized.

A program of construction projects to meet immediate capital needs for highways in the District is hereby authorized. (May 18, 1954, 68 Stat. 110, ch. 218, title IV, § 401; 1973 Ed., § 7-132.)

§ 7-133. Use of land in squares 354 and 355 for Southwest Freeway and for redevelopment of Southwest area of District.

The Mayor of the District of Columbia is hereby authorized to use the land in squares 354 and 355 in the District of Columbia, and the water frontage on the Washington Channel of the Potomac River lying south of Maine Avenue between 11th and 12th Streets, including the buildings and wharves thereon, for the proposed Southwest Freeway and Washington Channel approaches thereto, and for the redevelopment of the Southwest area of the District of Columbia pursuant to authority contained in §§ 5-801 to 5-820. (Aug. 28, 1958, 72 Stat. 983, Pub. L. 85-821; 1973 Ed., § 7-134.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-134. Federal-aid highway projects — Authority to provide payments and services.

For the purpose of enabling the District of Columbia to have its federal-aid highway projects approved under § 106 or 117 of Title 23, United States Code, the Mayor of the District of Columbia may, in connection with the acquisition of real property in the District of Columbia for any federal-aid highway project, provide the payments and services described in §§ 505, 506, 507, and 508 of Title 23, United States Code. (Aug. 23, 1968, 82 Stat. 827, Pub. L. 90-495, § 23(d); 1973 Ed., § 7-135.)

Cross references. — As to Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, see § 5-834.

References in text. — Sections 505, 506, 507, and 508 of Title 23, United States Code, referred to at the end of this section, related to relocation payments and assistance, and were a part of Chapter 5 of Title 23. That chapter was repealed January 2, 1971, by § 220(a)(10) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Appropriations authorized. — Public Law 103-334, 108 Stat. 2581, the District of Columbia Appropriations Act, 1995, provided for construction projects \$5,600,000, as authorized by §§ 43-1512 through 43-1519; §§ 43-1524 and 43-1527; [§§ 9-219 and 47-3402; § 40-805(7); and §§ 1-2451, 1-2452, 1-2454, 1-2456, and 1-2457]; including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until

expended: Provided, That \$140,000 shall be available for project management and \$110,000 shall be available for design by the Director of the Department of Public Works or by contract for architectural engineering services, as may be determined by the Mayor: Provided further, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: Provided further, That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1996, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1996: Provided further, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

Compliance with hearing requirements.

— Congress, having accorded all citizens the right to participate in the determination of federally financed highway projects through public hearings, could not, without adequate justification, discriminate against the citizens of the District of Columbia by directing that the construction of a bridge in the District proceed without compliance with hearing requirements. *District of Columbia Fed'n of Civic Ass'ns v. Volpe*, 434 F.2d 436 (D.C. Cir. 1970).

§ 7-135. Same — Authority to pay public utility relocation expenses; definitions.

(a) Notwithstanding any provisions of law to the contrary, whenever the Mayor of the District of Columbia shall determine that the construction or modification of a project, on or a part of the National System of Interstate and Defense Highways within the District of Columbia under Title 23 of the United States Code, necessitates the relocation, adjustment, replacement, removal, or abandonment of utility facilities, the utility owning such facilities shall relocate, adjust, replace, remove, or abandon the same, as the case may be. The cost of relocation, adjustment, replacement, or removal, and the cost of abandonment of such facilities, shall be paid to the utility by the District of Columbia, as a part of the cost of such project.

(b) As used in this section:

(1) The term “utility” means any gas plant, gas corporation, electric plant, electrical corporation, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipeline company, whether publicly or privately owned, as those terms are defined in §§ 43-212 to 43-221.

(2) The term “utility facility” means all real and personal property, buildings, and equipment owned or held by a utility in connection with the conduct of its lawful business.

(3) The term “cost of relocation, adjustment, replacement, or removal” means the entire amount paid by such utility properly attributable to such relocation, adjustment, replacement, or removal, as the case may be, less any increase in value on account of any betterment of the new utility facilities over the old utility facilities, and less any salvage value derived from the old utility facilities.

(4) The term “cost of abandonment” means the actual cost to abandon any utility facilities which are not to be used, relocated, adjusted, replaced, removed, or salvaged, together with the original cost of such abandoned facilities, less depreciation. (Oct. 14, 1972, 86 Stat. 812, Pub. L. 92-495, § 4; 1973 Ed., § 7-135a.)

Cross references. — As to Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, see § 5-834.

Section references. — This section is referred to in § 7-606.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-136. Same — Contract authority.

The Mayor of the District of Columbia is authorized to enter into contracts in connection with projects undertaken as federal-aid highway projects under the provisions of the Federal Aid Highway Act of 1944 in such amounts as shall be approved by the Federal Highway Administration, Department of Trans-

poration. (1973 Ed., § 7-135b; Oct. 26, 1973, 87 Stat. 507, Pub. L. 93-140, § 15.)

References in text. — The Federal Aid Highway Act of 1944, referred to near the middle of this section, was repealed by § 2(28) of the Act of August 27, 1958, 72 Stat. 919, Pub. L. 85-767.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-137. Same — Grade crossing elimination projects.

The Mayor of the District of Columbia is authorized to construct grade crossing elimination and other wholly District construction projects or those authorized under § 8 of the Act of June 16, 1936 (49 Stat. 1521), and § 1(b) of the Federal Aid Highway Act of 1938, in accordance with the provisions of such acts. Pursuant to this authority, the Mayor may make payment to contractors and payment for other expenses in connection with the costs of surveys, design, construction, and inspection pending reimbursement to the District of Columbia by the Federal Highway Administration, Department of Transportation, or other parties participating in such projects. (1973 Ed., § 7-135c; Oct. 26, 1973, 87 Stat. 507, Pub. L. 93-140, § 16.)

References in text. — Section 8 of the Act of June 16, 1936 (49 Stat. 1521), and § 1(b) of the Federal Aid Highway Act of 1938, both referred to in the first sentence of this section, were repealed by § 2(19) and (21) of the Act of August 27, 1958, 72 Stat. 919, Pub. L. 85-767.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-138. Authority to acquire and transfer to Secretary of the Interior real property in exchange for real property transferred to the District; payments in lieu of transfer of property.

(a) The Mayor of the District of Columbia is authorized to acquire by purchase, donation, condemnation or otherwise, real property for transfer to the Secretary of the Interior in exchange or as replacement for park, parkway, and playground lands transferred to the District of Columbia for a public purpose pursuant to § 8-111 and the Mayor is further authorized to transfer to the United States title to property so acquired.

(b) Payments are authorized to be made by the Mayor, and received by the Secretary of the Interior, in lieu of property transferred pursuant to subsection

(a) of this section. The amount of such payment shall represent the cost to the Secretary of the Interior of acquiring real property suitable for replacement of the property so transferred as agreed upon between the Mayor and the head of said agency and shall be available for the acquiring of the replacement property. (Aug. 23, 1968, 82 Stat. 828, Pub. L. 90-495, § 23(e), (f); 1973 Ed., § 7-136.)

Cross references. — As to Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, see § 5-834.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 2. STREETS.

Sec.

7-201. [Repealed].

7-202 to 7-214. [Repealed].

7-215, 7-216. [Repealed].

7-217. Cost of street extension assessed as benefits; assessments for parkways.

Sec.

7-218, 7-219. [Repealed].

7-220. [Repealed].

§ 7-201. Council authorized to open, extend, or widen streets; damages and costs.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 704, 30 DCR 148 and Aug. 2, 1983, D.C. Law 5-24, § 16, 30 DCR 3341.

Cross references. — As to Mayor's authority to open, extend, widen or straighten streets or alleys, see § 7-441.

Legislative history of Law 4-201. — Law 4-201, the "Street and Alley Closing and Acquisition Procedures Act of 1982," was introduced in Council and assigned Bill No. 4-341, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-285 and trans-

mitted to both Houses of Congress for its review.

Legislative history of Law 5-24. — Law 5-24, the "Technical and Clarifying Amendments Act of 1983," was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

§§ 7-202 to 7-214. Condemnation proceedings authorized; contents of condemnation petition; public notice of proceedings; service; appointment of guardian ad litem; condemnation jury — Selection; composition; oath; objections to members; hearings; verdict; condemnation of part of plot; assessment of benefits and damages; excess damages and costs; objections to verdict; vacation of verdict; confirmation of verdict; payment of award; assessments made liens; payments; amendment of proceedings; appeal; deposit of award in registry; transfer of title.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 719, 30 DCR 148.

Cross references. — As to methods of acquisition of land for opening, extending, widening or straightening any street, minor street or alley, see § 7-442.

As to validity of condemnation proceeding pursuant to repealed law, see § 7-471.

Legislative history of Law 4-201. — See note to § 7-201.

§§ 7-215, 7-216. Condemnation for streets through undivided part of plot — Authorized; procedures; appropriations.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 721, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-201.

§ 7-217. Cost of street extension assessed as benefits; assessments for parkways.

The United States shall not bear any part of the cost of the acquisition of land for street extensions, but when the condemnation of any land for such purposes is authorized by law the total cost of the land and the expenses of the condemnation proceedings shall be assessed as benefits; in any case where land is condemned for a parkway, including a street or streets, where such parkway is of considerable length with relation to its width, not less than one-half of the cost of the land including the same fraction of the expenses of the condemnation proceedings shall be assessed as benefits; and in any case where land is condemned for a public park, not less than one-third of the cost of the land including the same fraction of the expenses of the condemnation proceedings shall be assessed as benefits. (June 26, 1912, 37 Stat. 178, ch. 182; 1973 Ed., § 7-218.)

§§ 7-218, 7-219. Dismissal of proceedings; appropriations authorized.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 723, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-201.

§ 7-220. Assessments for benefits.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 724, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-201.

CHAPTER 3. ALLEYS AND MINOR STREETS.

Sec.

7-301 to 7-308. [Repealed].

7-309 to 7-312. [Repealed].

7-313 to 7-318. [Repealed].

7-319. [Repealed].

7-320, 7-321. [Repealed].

7-322. [Repealed].

Sec.

7-323. [Repealed].

7-324 to 7-329. [Repealed].

7-330. [Repealed].

7-331. Condemnation of materials for making
or repairing public roads.

7-332. [Repealed].

§§ 7-301 to 7-308. Mayor authorized to open, extend, widen, or straighten alleys and minor streets; conditions; width of minor streets; closing of alleys rendered useless or unnecessary; closing of existing alley upon dedication of new alley; closing of alley less than 10 feet wide; closing of alley upon erection of building covering two-thirds of square; change of alleyway — Petition; recordation of order and plat; title to closed alley; closing of alley upon new use of square.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 714, 30 DCR 148.

Cross references. — As to street and alley closing procedures, see subchapter II of Chapter 4 of this title.

As to Mayor's authority to open, extend, widen or straighten streets or alleys, see § 7-441.

As to width of minor streets, see § 7-444.

Legislative history of Law 4-201. — Law 4-201, the "Street and Alley Closing and Acquisition Procedures Act of 1982," was introduced

in Council and assigned Bill No. 4-341, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-285 and transmitted to both Houses of Congress for its review.

§§ 7-309 to 7-312. Closing of alley upon acquisition by District of abutting property; land owned by District may be set aside for alley purposes; notice of order; hearing; maps.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 706, 30 DCR 148.

Cross references. — As to street and alley closing procedures, see subchapter II of Chapter 4 of this title.

Legislative history of Law 4-201. — See note to § 7-301.

§§ 7-313 to 7-318. Condemnation to open, widen, or straighten alleys or minor streets; plats; notice of condemnation; service; condemnation jury; appointment; oath; objection to jurors; hearing; verdict; assessment of benefits where only part of parcel is condemned; objections to verdict; modification or vacation; benefits assessed must equal damages and costs.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 715, 30 DCR 148.

Cross references. — As to methods of acquisition of land for opening, extending, widening or straightening any street, minor street or alley, see § 7-442.

As to validity of condemnation proceeding pursuant to repealed law, see § 7-471.

Legislative history of Law 4-201. — See note to § 7-301.

§ 7-319. Assessment on all lots, pieces or parcels benefited by opening of alley or minor street or by establishment of building line.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 705, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-301.

§§ 7-320, 7-321. Awards paid by Treasurer of United States; benefits deducted from damages; assessments made liens; payments; amendments of property description.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 716, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-301.

§ 7-322. Appeal from confirmation of assessment.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 717, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-301.

§ 7-323. Benefit assessments from condemnation for alleys or minor streets.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 727, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-301.

§§ 7-324 to 7-329. Proceeds of sale of lands paid into Treasury; plats to be made by Surveyor; costs; correcting defects in certain prior proceedings; certain alleys previously opened made valid; certain alleys closed prior to March 3, 1901, unaffected; surplus from sale of land in which United States is interested to be paid into Treasury.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 718, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-301.

§ 7-330. Costs paid from alley appropriations when proceedings fail.

Repealed. Mar. 9, 1983, D.C. Law 4-201, § 703, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-301.

§ 7-331. Condemnation of materials for making or repairing public roads.

In any case where materials of any kind shall be deemed necessary for making or repairing a public road, if the proper authorities cannot agree with the owner as to their purchase, such materials may be condemned in the same manner as provided for in this chapter in cases of condemnation of land for the purposes of a public road. (R.S., D.C., § 267; 1973 Ed., § 7-332.)

§ 7-332. Mayor to employ assistant to Corporation Counsel for condemnation proceedings.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 720, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-301.

CHAPTER 4. STREET AND ALLEY CLOSING AND ACQUISITION PROCEDURES.

Sec.

7-401 to 7-410. [Repealed].

Subchapter I. Definitions.

7-411. Definitions.

Subchapter II. Street and Alley Closing Procedures.

7-421. Authority of Council.

7-422. Actions required of Mayor prior to consideration of application.

7-423. Exceptions from requirement of referral of application to National Capital Planning Commission.

7-424. Public hearing required.

7-425. Inapplicability of § 7-424.

7-426. Duties of applicant; Mayor to make available signs and prescribe format for written notice.

7-427. Publication of notice of hearing; written notice to involved advisory neighborhood commission.

7-428. Disposition of property; use of money received therefrom.

7-429. Approval subject to contingencies; relocation assistance.

7-430. Required notice of approval to affected property owners.

7-431. Judicial proceeding upon filing of objection; damages.

7-432. Recordation of closing act and Surveyor's plat; effects of recordation.

7-433. Disposition of closing act and plat.

7-434. Fee schedule.

7-435. Mayor to issue procedures for review by agencies and public utilities.

Subchapter III. New Streets or Alleys.

Sec.

7-441. Scope of Mayor's authority.

7-442. Methods of acquisition.

7-443. Council acceptance of land dedication.

7-444. Minor streets.

7-445. Area between property line and building restriction line.

7-446. Improvement of street — Prerequisites.

7-447. Same — Rules.

7-448. Submission of highway plan.

7-449. Official street map; periodic publication; contents; availability.

Subchapter IV. Naming of Public Spaces.

7-451. Scope of Council's authority.

7-452. System of designations.

7-453. Alleys.

7-454. Duplicative names prohibited.

7-455. Use of living persons' names prohibited; use of deceased persons' names restricted.

7-456. Extent of name to be used; use on street signs.

7-457. Submission of bill to involved advisory neighborhood commission.

7-458. Proposal to name or rename to be submitted to affected property owners.

7-459. Rights of certain boards preserved.

Subchapter V. Miscellaneous Provisions.

7-471. Validity of condemnations or closings pursuant to repealed law not affected.

7-472. Authority to issue rules.

§§ 7-401 to 7-410. Closings authorized; disposition of property; proposed closing of public way — Notice, hearing; plans; order; recordation; in rem proceeding — Instituted upon objection to order; damages; assessment of benefits; abandonment; petition by property owners for closing; prior laws to remain in force; short title.

Repealed. Mar. 10, 1983, D.C. Law 4-201, § 726, 30 DCR 148.

Legislative history of Law 4-201. — See note to § 7-411.

*Subchapter I. Definitions.***§ 7-411. Definitions.**

For purposes of this chapter the term:

(1) "Alley" means any public alley, as recorded in the records of the Office of the Surveyor, from its intersection with a street or another alley to its next intersection with a street or alley, or where it dead-ends.

(2) "Council" means the Council of the District of Columbia.

(3) "District" means the District of Columbia government.

(4) "Highway plan" means the plan of the permanent system of highways developed pursuant to § 7-107 et seq.

(5) "Mayor" means the Mayor of the District of Columbia, or the Mayor's designated representative.

(6) "Owner" means the owner(s) of record as shown on the records in the Department of Finance and Revenue.

(7) "Street" means any public right-of-way, recorded as a street, road, or highway in the records of the Office of the Surveyor.

(8) "Surveyor" means the Surveyor of the District of Columbia. (Mar. 10, 1983, D.C. Law 4-201, § 101, 30 DCR 148.)

Cross references. — As to Surveyor of District, see §§ 1-901 to 1-929.

Legislative history of Law 4-201. — Law 4-201, the "Street and Alley Closing and Acquisition Procedures Act of 1982," was introduced in Council and assigned Bill No. 4-341, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-285 and trans-

mitted to both Houses of Congress for its review.

Exclusivity of chapter. — Where the legislature has provided a method of vacating or abandoning streets, that method is exclusive. *Tenley & Cleveland Park Emergency Comm. v. District of Columbia*, 115 WLR 1989 (Super. Ct. 1987).

Cited in *District of Columbia v. McGregor Properties, Inc.*, App. D.C., 479 A.2d 1270 (1984).

*Subchapter II. Street and Alley Closing Procedures.***§ 7-421. Authority of Council.**

The Council may close all or part of any street or alley which it determines is unnecessary for street or alley purposes. (Mar. 10, 1983, D.C. Law 4-201, § 201, 30 DCR 148.)

Cross references. — As to closing of alleys or streets in municipal center, see § 9-201.

Section references. — This section is referred to in § 5-103.

Legislative history of Law 4-201. — See note to § 7-411.

Opposition to partial closure of Pennsylvania Avenue, N.W. — Pursuant to Resolution 6-136, the "Opposition to the Partial Closure of Pennsylvania Avenue, N.W., Resolution of 1985," effective May 14, 1985, the Council emphatically opposes any proposal which includes

the closure of Pennsylvania Avenue, N.W., between 15th and 17th Streets, N.W.

Authority to enact closing acts reaffirmed. — Section 133 of § 101(d) of Pub. L. 99-591, the D.C. Appropriation Act, 1987, provided that the Congress of the United States reaffirms the authority of the Council of the District of Columbia, as authorized by § 7-421, to enact the Closing of a Portion of 8th Street, Northwest, and Public Alleys in Square 403 Act of 1984 (D.C. Law 5-148), and the Closing of a Portion of 8th Street, Northwest, and Public

Alleys and Square 403 Emergency Act of 1984 (D.C. Act 5-206).

Alley closings. — Council regularly adopts alley closings which take effect after signature by the Mayor and 30-day Congressional review in accordance with § 1-233(c)(1) and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations. The alley closings are noted in the D.C. Laws Not Codified Table located in Volume 11.

Closing of Glover Archbold Parkway. — Section 2 of D.C. Law 9-51 ordered, on a temporary basis, the closing of Glover Archbold Parkway, N.W., between Upton Street, N.W., and Van Ness Street, N.W. Section 3 of D.C. Law 9-51 provided, on a temporary basis, for the establishment of a street easement to be known as 40th Place, N.W., in Square 1789 and

adjacent to Glover Archbold Parkway, N.W., S.O. 99-117 in Ward 3. Section 4 of D.C. Law 9-51 provided a map of the closing of Glover Archbold Parkway, N.W., and the establishment of 40th Place, N.W. Section 5(b) of D.C. Law 9-51 provided that the act shall expire on the 225th day of its having taken effect.

Generally. — Congress viewed the power to close and dispose of streets in the District of Columbia as a municipal power and chose to delegate that municipal power to the municipal government it had created; Congress performed this delegation by passing the Street Readjustment Act of 1932. *Techworld Dev. Corp. v. District of Columbia Preservation League*, 648 F. Supp. 106 (D.D.C. 1986).

Cited in *Levy v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 570 A.2d 739 (1990).

§ 7-422. Actions required of Mayor prior to consideration of application.

Prior to consideration by a committee of the Council of an application to close all or part of a street or alley, the Mayor shall:

(1) Provide the Council with a Surveyor's plat showing:

- (A) The street or alley, or part thereof, to be closed;
- (B) The lots abutting the street or alley, or part thereof, to be closed;
- (C) Any dedication of land for street or alley purposes;
- (D) Any easements to be established or reserved by the District; and
- (E) The person(s) to whom the title to the land to be closed is to revert or vest.

(2) Provide the Council with any comments on the proposed closing submitted by the affected District agencies and public utilities.

(3) Except as provided in § 7-423, refer the application to the National Capital Planning Commission for its recommendations.

(4) Refer to the Historic Preservation Review Board, as established by § 5-1003 for its review, any application to close any street located on the L'Enfant Street Plan.

(5) Refer the application to the Advisory Neighborhood Commission in whose area the street or alley to be closed is located for its review, and provide the Council with a copy of any comments submitted by the affected Advisory Neighborhood Commission.

(6) Provide notice of the application to each abutting property owner, and provide the Council with a copy of any comments submitted by an abutting property owner. (Mar. 10, 1983, D.C. Law 4-201, § 202, 30 DCR 148; May 10, 1988, D.C. Law 7-106, § 2(b), 35 DCR 2170; Sept. 21, 1988, D.C. Law 7-144, § 3(a), 35 DCR 5405.)

Section references. — This section is referred to in §§ 5-103, 7-423.

Legislative history of Law 4-201. — See note to § 7-411.

Legislative history of Law 7-106. — See note to § 7-446.

Legislative history of Law 7-144. — Law 7-144, the "Closing of a Public Alley in Square

140, S.O. 86-368, and the Street and Alley Closing Conforming Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-482, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 14, 1988 and June 28, 1988, respectively. Signed by the Mayor on June 30, 1988, it was assigned Act No. 7-196 and transmitted to both Houses of Congress for its review.

Delegation of authority under Law 4-201. — See Mayor's Order 83-139, May 26, 1983.

Cited in Techworld Dev. Corp. v. District of Columbia Preservation League, 648 F. Supp. 106 (D.D.C. 1986); Levy v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 570 A.2d 739 (1990).

§ 7-423. Exceptions from requirement of referral of application to National Capital Planning Commission.

Section 7-422(3) shall not apply to any application to close all or part of an alley in the circumstances enumerated in § 7-425(2), (4)(A), (5), or (6). (Mar. 10, 1983, D.C. Law 4-201, § 203, 30 DCR 148.)

Section references. — This section is referred to in § 7-422.

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-424. Public hearing required.

Except as provided in § 7-425, the Council shall hold a public hearing on all applications to close all or part of a street or alley. (Mar. 10, 1983, D.C. Law 4-201, § 204, 30 DCR 148.)

Section references. — This section is referred to in § 7-425.

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-425. Inapplicability of § 7-424.

Section 7-424 shall not apply to any application to close:

(1) All or part of any alley when the application has been supported in writing by all of the owners of all the property in the square;

(2) All or part of any alley where the width of the alley is 10 feet or less, and the application has been supported in writing by all of the owners of all the property abutting the entire alley;

(3) All or part of any dead-end or unimproved street or alley when the application has been supported in writing by all of the record owners of all the property on both sides of the block(s) of the street which abuts the block(s) of that street to be closed or which abuts the entire alley;

(4) All or any part of any alley when the application has been supported in writing by all of the record owners of all the property abutting the entire alley, and when land in the same square is concurrently provided for alley purposes either by:

(A) Dedication; or

(B) Easement;

(5) All or part of any alley when:

(A) The closing is supported in writing by all of the owners of the property in $\frac{2}{3}$ of the square;

(B) The alley, all or part of which is to be closed, is located entirely within $\frac{3}{4}$ of the square owned by the persons supporting the closing; and

(C) The owners propose to develop the entire area of the square which they own; and

(6) All or part of any alley when the District or the United States holds title to all the property abutting the alley, all or part of which is to be closed. (Mar. 10, 1983, D.C. Law 4-201, § 205, 30 DCR 148; Mar. 14, 1985, D.C. Law 5-159, § 9, 32 DCR 30.)

Section references. — This section is referred to in §§ 7-423, 7-424, and 7-430.

Legislative history of Law 4-201. — See note to § 7-411.

Legislative history of Law 5-159. — Law 5-159, the “End of Session Technical Amendments Act of 1984,” was introduced in Council and assigned Bill No. 5-540, which was referred

to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

§ 7-426. Duties of applicant; Mayor to make available signs and prescribe format for written notice.

(a) At least 15 days and no more than 60 days prior to the date of any public hearing to consider an application to close all or part of a street or alley, the applicant shall:

(1) Give written notice of the date, time, and location of the public hearing to all of the owners of all the property on both sides of the block(s) of the street which abuts the block(s) of that street to be closed or which abuts that entire alley; and

(2) Post a sign which indicates the date, time, and location of the public hearing at each end of the block(s) of that street to be closed, or at each entrance from a street to any alley in the square.

(b) At least 15 days and no more than 6 months prior to final consideration by the Council of proposed legislation to close all or part of a street or alley which has not been the subject of a public hearing, the applicant shall:

(1) Give written notice of the Council’s intent to consider the proposed legislation to all of the owners of all the property on both sides of the block(s) of the street or which abuts that alley; and

(2) Post a sign which indicates the Council’s intent to consider the proposed legislation at each end of the block(s) of that street to be closed, or at each entrance from a street to any alley in the square.

(c) The applicant shall certify to the Council that the notice required in subsection (a) or (b) of this section has been given. A post office receipt of proof of mailing of the notice to the property owner’s last known address and a photograph of each posted sign shall be sufficient proof that the required notice was given.

(d) The Mayor shall make available the signs and shall prescribe by rule a format for the written notice to be given pursuant to this section. (Mar. 10, 1983, D.C. Law 4-201, § 206, 30 DCR 148; Apr. 30, 1988, D.C. Law 7-104, § 30, 35 DCR 147; Sept. 21, 1988, D.C. Law 7-144, § 3(b), 35 DCR 5405.)

Cross references. — As to public notice, see § 1-1506.

Legislative history of Law 4-201. — See note to § 7-411.

Legislative history of Law 7-104. — Law 7-104, the “Technical Amendments Act of 1987,” was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee

of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-144. — See note to § 7-422.

§ 7-427. Publication of notice of hearing; written notice to involved advisory neighborhood commission.

(a) At least 15 days prior to a public hearing to consider an application to close all or part of a street or alley, the Council shall publish notice of the public hearing in the D.C. Register and shall give written notice of the public hearing to the advisory neighborhood commission(s) in whose commission area the street and alley to be closed is located.

(b) At least 15 days and no more than 6 months prior to final consideration by the Council of proposed legislation to close all or part of a street or alley which has not been the subject of a public hearing, the Council shall give written notice of the Council’s intent to consider the proposed legislation to the advisory neighborhood commission(s) in whose commission area the street and alley to be closed is located. (Mar. 10, 1983, D.C. Law 4-201, § 207, 30 DCR 148; May 10, 1988, D.C. Law 7-106, § 2(c), 35 DCR 2170.)

Cross references. — As to public notice, see § 1-1506.

Legislative history of Law 4-201. — See note to § 7-411.

Legislative history of Law 7-106. — See note to § 7-446.

§ 7-428. Disposition of property; use of money received therefrom.

Where title to the street or alley, of which all or part is to be closed, can reasonably be determined to be held by the United States or the District, the Council may dispose of the property to the best advantage of the District and may assess the fair market value of the land and the value of the District’s improvements on the land to the person(s) to whom the title to the land is to vest. Any money received for land where the title was held by the United States shall be deposited in the Treasury of the United States to the credit of the United States. Any money received for land where title was held by the District shall be credited to the General Fund of the District. (Mar. 10, 1983, D.C. Law 4-201, § 208, 30 DCR 148.)

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-429. Approval subject to contingencies; relocation assistance.

(a) The Council may make the approval of a closing of all or part of a street or alley contingent upon any or all of the following:

- (1) The dedication of any other land for street or alley purposes;
- (2) The granting to the District of specific easements for public purposes;

or

- (3) Any other condition that the Council considers necessary.

(b)(1) If the closing of all or part of a street or alley is associated with the demolition, substantial rehabilitation, or discontinuance of an existing building and results in the displacement of existing retail tenants, then the approval by the Council of the closing shall be contingent upon the filing in the Recorder of Deeds Division of the District of Columbia Department of Finance and Revenue of a covenant between the District and the applicant that incorporates the following relocation assistance conditions:

(A) The applicant agrees to offer each eligible retail tenant, for a period of 3 months beginning on the date on which the covenant is filed, a preferential opportunity to return to the new or rehabilitated building upon completion; or

(B) The applicant agrees to provide each eligible retail tenant, within 6 months of the date on which the covenant is filed, a relocation payment calculated by multiplying the assessed value of the existing building by the proportion of square footage within the building that is occupied by the retail tenant, but in no event shall this relocation payment be required to exceed \$25,000.

(2) If the applicant offers the preferential opportunity to return referred to in subparagraph (1)(A) of this subsection and if the eligible retail tenant accepts the offer during the 3-month period, then the applicant shall not be required to provide the eligible retail tenant with the relocation payment referred to in subparagraph (1)(B) of this subsection. If the applicant offers the preferential opportunity to return referred to in subparagraph (1)(A) of this subsection and if the eligible retail tenant declines or does not respond to the offer during the 3-month period, then the applicant shall provide the eligible retail tenant with the relocation payment referred to in subparagraph (1)(B) of this subsection. If the applicant chooses not to offer the preferential opportunity to return referred to in subparagraph (1)(A) of this subsection, then the applicant shall provide the eligible retail tenant with the relocation payment referred to in subparagraph (1)(B) of this subsection.

(3) The preferential opportunity to return referred to in subparagraph (1)(A) of this subsection includes at least a written offer to return to space to be leased in the new or rehabilitated building upon completion.

(4) The covenant referred to in paragraph (1) of this subsection shall be designed for the benefit of eligible retail tenants who are displaced by a development associated with a street or alley closing, and both the eligible retail tenants and the Corporation Counsel, on behalf of the District of Columbia, shall have the right to sue in the Superior Court of the District of Columbia to enforce the covenant. A copy of the executed covenant shall be sent by the applicant to all retail tenants who may be displaced by a development associated with the application, and the applicant shall use best efforts to notify retail tenants of the relocation assistance required by this section.

(5) Prior to consideration by a committee of the Council of an application to close all or part of a street or alley, the Mayor shall provide the Council with information regarding:

(A) The effect of the street or alley closing upon any existing retail tenants in buildings associated with the street or alley closing; and

(B) The assessed value of the street or alley to be closed and the assessed values of land and of buildings associated with the street or alley closing.

(c) In order to be eligible for the relocation assistance provided in subsection (b) of this section, a retail tenant:

(1) Shall be a nonresidential tenant offering goods or nonprofessional services;

(2) Shall have been a tenant of the existing building for a minimum of 3 years prior to the date of introduction of proposed legislation to close all or a part of a street or alley associated with the demolition, substantial rehabilitation, or discontinuance of the existing building;

(3) Shall have had an annual gross revenue, from all business locations within the District of Columbia, that totaled not more than \$5,000,000 in the year preceding the date of displacement;

(4) Shall not have an ownership interest in the property to be developed; and

(5) Shall relocate within the District of Columbia.

(d) A retail tenant shall refund any relocation payment provided under this section if the retail tenant relocates outside the District of Columbia within a period of 3 years.

(e) The provisions of subsections (b) and (c) of this section shall not apply to applications by the Washington Metropolitan Area Transit Authority for closing all or part of a street or alley for the sole purpose of construction of transit facilities.

(f) The approval of each street or alley closing that is not exempted by section 308b of the Comprehensive Plan (10 DCMR) shall be contingent upon the filing in the Recorder of Deeds Division of the District of Columbia Department of Finance and Revenue of a covenant between the District government and the applicant that incorporates the housing requirements set forth in section 308b of the Comprehensive Plan (10 DCMR), as such requirements may be amended. (Mar. 10, 1983, D.C. Law 4-201, § 209, 30 DCR 148; Aug. 7, 1986, D.C. Law 6-133, § 2, 33 DCR 3625; Oct. 6, 1994, D.C. Law 10-193, § 3(c), 41 DCR 5536.)

Section references. — This section is referred to in § 7-432.

Effect of amendments. — D.C. Law 10-193 added (f).

Legislative history of Law 4-201. — See note to § 7-411.

Legislative history of Law 6-133. — Law 6-133, the "Street and Alley Closing and Acquisition Procedures Act of 1982 Relocation Assistance Amendment Act of 1986," was introduced in Council and assigned Bill No. 6-330, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 1986 and May 27, 1986, respectively. Signed by the Mayor on June 6, 1986, it

was assigned Act No. 6-171 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-193. — Law 10-193, the "Comprehensive Plan Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-212, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on August 8, 1994, it was assigned Act No. 10-323 and transmitted to both Houses of Congress for its review. D.C. Law 10-193 became effective on October 6, 1994.

Effective date of District elements of Comprehensive Plan for the National Cap-

ital. — Section 4(b) of D.C. Law 10-193 provided that no District element of the Comprehensive Plan for the National Capital shall take effect until it has been reviewed by the National Capital Planning Commission as provided in § 1-2002(a) and § 1-244.

References in text. — Section 308b of the

Comprehensive Plan (10 DCMR) referred to in (f) is codified as § 308b of Title 10 of the D.C. Municipal Regulations.

Cited in *Levy v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 570 A.2d 739 (1990).

§ 7-430. Required notice of approval to affected property owners.

Except in the circumstances enumerated in § 7-425(1) through (6), following enactment of legislation ordering the closing of all or part of a street or alley, the Mayor shall give written notice to the owners of the property on both sides of the block(s) of the street to be closed or which abuts that entire alley, that the legislation has been approved by the Council and signed by the Mayor. This notice shall also indicate that any written objection by an interested party aggrieved by the closing must state how the person is aggrieved by the closing and must be filed with the Mayor within 30 days of the mailing of the notice. (Mar. 10, 1983, D.C. Law 4-201, § 210, 30 DCR 148.)

Section references. — This section is referred to in § 7-431.

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-431. Judicial proceeding upon filing of objection; damages.

When an objection is filed with the Mayor as provided for in § 7-430, the Mayor shall institute a proceeding in rem in the Superior Court of the District of Columbia for the closing of the street or alley, or part thereof, and for the ascertainment of damages and the assessment of benefits resulting from the closing. The proceedings shall be conducted in the same manner as proceedings for the condemnation of land for streets and alleys pursuant to Chapter 13 of Title 16. Any damages awarded by the Court shall cover the administrative costs of the proceedings and shall be paid by the applicant for the closing, the applicant having the right, within a reasonable time to be fixed by the Court in its order confirming the verdict, to abandon the proposed closing without being liable for damages ordered by the Court. If no damages are awarded by the Court, the person who filed the objection shall pay the administrative costs of the in rem proceeding. (Mar. 10, 1983, D.C. Law 4-201, § 211, 30 DCR 148.)

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-432. Recordation of closing act and Surveyor's plat; effects of recordation.

Following the effective date of an act ordering the closing of a street or alley, and following the finding by the Surveyor of compliance with any conditions required in the street or alley closing act pursuant to § 7-429 and following the payment of any damages awarded pursuant to § 7-431, the Surveyor shall

record a copy of the street or alley closing act and the Surveyor's plat in the Office of the Surveyor. Upon the recordation of the Surveyor's plat, the street or alley, or part thereof, will be deemed closed and the title to the land shall revert to or be vested in fee simple to the record owners as shown on the plat. This land shall thereafter be assessable in all respects as all other real property in the District of Columbia. The right of the public to use the street or alley, and any proprietary interest of the United States or the District in the street or alley, or part thereof, shall cease, unless a temporary continued use is required by the Mayor. Upon the recordation in the Office of the Surveyor of a closing plat showing any easement or dedication of land for public purposes that has been established or accepted in an act closing a street or alley, or part thereof, the land encompassed by the easement or dedication shall thereafter be available for that public use. (Mar. 10, 1983, D.C. Law 4-201, § 212, 30 DCR 148.)

Cross references. — As to Surveyor of District, see §§ 1-901 to 1-929.

As to Recorder of Deeds of District, see §§ 45-901 to 45-915.

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-433. Disposition of closing act and plat.

Upon the recordation of the plat, the Surveyor shall send a copy of the act and the plat to the applicant and to the Director of the Department of Finance and Revenue. (Mar. 10, 1983, D.C. Law 4-201, § 213, 30 DCR 148.)

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-434. Fee schedule.

The Mayor shall establish a fee schedule to recover the costs associated with the consideration of an application to close all or part of a street or alley. (Mar. 10, 1983, D.C. Law 4-201, § 214, 30 DCR 148.)

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-435. Mayor to issue procedures for review by agencies and public utilities.

Within 6 months of March 10, 1983, the Mayor shall issue procedures to ensure the thorough review by the affected District agencies and by the public utilities of all applications to close all or part of a street or alley. (Mar. 10, 1983, D.C. Law 4-201, § 215, 30 DCR 148.)

Legislative history of Law 4-201. — See note to § 7-411.

*Subchapter III. New Streets or Alleys.***§ 7-441. Scope of Mayor's authority.**

The Mayor may open, extend, widen, or straighten:

- (1) Any street to conform with the highway plan; or
- (2) Any minor street or alley, upon the petition of the owners of more than ½ of the property fronting on the proposed street or alley, or when the Mayor finds that the public interest would be served best by the action. (Mar. 10, 1983, D.C. Law 4-201, § 301, 30 DCR 148.)

Cross references. — As to dedication of streets, see § 1-914.

Section references. — This section is referred to in § 7-442.

Legislative history of Law 4-201. — See note to § 7-411.

Delegation of authority under Law 4-201. — See Mayor's Order 83-139, May 26, 1983.

Cited in Tenley & Cleveland Park Emergency Comm. v. District of Columbia, 115 WLR 1973 (Super. Ct. 1987).

§ 7-442. Methods of acquisition.

Any land used for the purpose of opening, extending, widening, or straightening any street, minor street, or alley pursuant to § 7-441 may be acquired by:

- (1) Purchase;
- (2) Condemnation pursuant to Chapter 13 of Title 16; or
- (3) Acceptance by the Council of a dedication of land: Provided, that if the land is to be acquired for a Federal Aid Highway project, the person offering to dedicate the land must be informed of his or her right to compensation for it. (Mar. 10, 1983, D.C. Law 4-201, § 302, 30 DCR 148.)

Cross references. — As to abolition of Georgetown as separate and distinct city and its incorporation as part of City of Washington, see § 1-107.

As to application of this chapter to condemnation proceedings under District of Columbia Alley Dwelling Act, see § 5-103.

As to condemnation of material for making and repairing public roads, see § 7-331.

As to condemnation proceedings, see §§ 16-1301 to 16-1385.

As to condemnation and payment of damages for land in excess of public needs, see § 16-1336.

Legislative history of Law 4-201. — See note to § 7-411.

Approval of new streets or alleys. — Section 3 of D.C. Law 8-81 provided that the Council accepted the dedication of land for minor streets in Squares 5041 and 5056; approved the set-aside of portions of public alleys for minor streets in Squares 5041 and 5056, as shown on the Surveyor's plat filed under S.O. 88-212; approved the set-aside of a portion of Grant Street, N.E., for Parkside Place, N.E., as

shown on the Surveyor's plat filed under S.O. 88-212; and approved the establishment of building restriction lines for minor streets in Squares 5041 and 5056, as shown on the Surveyor's plat filed under S.O. 88-212.

Section 2 of D.C. Law 8-178 provided that the Council accepts the dedication of land and approves the establishment of building restriction lines necessary to create minor streets within Lot 2 in Square 5957, as shown on the Surveyor's plat filed under S.O. 89-276, upon the filing of certain covenants in the Recorder of Deeds Division. Section 4(b) of D.C. Law 8-178 provided that if the covenant required by § 2 of the act is not filed within 2 years of October 2, 1990, the act shall expire.

Section 2 of D.C. Law 10-100 provided that the Council accepts the dedication of land in fee simple absolute of land in square 5338, for public street purposes, as shown on the surveyor's plat filed under S.O. 86-24.

Section 2 of D.C. Law 10-197 provided that the Council accepts the dedication of land and approves the establishment of building restric-

tion lines necessary to create a minor street in Square 5969 near Mississippi Avenue, S.E., and

4th Street, S.E., as shown on the Surveyor's plat filed under S.O. 92-124.

§ 7-443. Council acceptance of land dedication.

Where the highway plan shows: (1) A street as 90 feet wide, the Council may accept a dedication of land no less than 60 feet wide; (2) a street as 120 feet or more wide, the Council may accept a dedication of land no less than 90 feet wide: Provided, that in both clauses (1) and (2) of this section the persons dedicating the land agree to establish building restriction lines to correspond with the width of the street as shown on the highway plan. (Mar. 10, 1983, D.C. Law 4-201, § 303, 30 DCR 148.)

Cross references. — As to dedication of streets, see § 1-914.

As to building lines, see §§ 5-201 to 5-206.

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-444. Minor streets.

In any 1 block length, a minor street shall be 75 feet wide, though land may be acquired at a width of 55 feet with building restriction lines set 10 feet back on both sides of the street lines. (Mar. 10, 1983, D.C. Law 4-201, § 304, 30 DCR 148.)

Legislative history of Law 4-201. — See note to § 7-411.

Creation of street. — Section 2 of D.C. Law 7-102 provided that pursuant to § 7-444 the Council of the District of Columbia accepts the dedication of land and approves the establishment of building restriction lines necessary to create a minor street in Square 4325 connecting 31st Place, N.E., and Fort Lincoln Drive, N.E., in Fort Lincoln New Town, as shown in the Surveyor's plat filed under S.O. 85-189.

Approval of new streets or alleys. — Section 3 of D.C. Law 8-81 provided that the Council accepted the dedication of land for minor streets in Squares 5041 and 5056; approved the set-aside of portions of public alleys for minor streets in Squares 5041 and 5056, as shown on the Surveyor's plat filed under S.O. 88-212; approved the set-aside of a portion of Grant Street, N.E., for Parkside Place, N.E., as shown on the Surveyor's plat filed under S.O. 88-212; and approved the establishment of

building restriction lines for minor streets in Squares 5041 and 5056, as shown on the Surveyor's plat filed under S.O. 88-212.

Section 2 of D.C. Law 8-178 provided that the Council accepts the dedication of land and approves the establishment of building restriction lines necessary to create minor streets within Lot 2 in Square 5957, as shown on the Surveyor's plat filed under S.O. 89-276, upon the filing of certain covenants in the Recorder of Deeds Division. Section 4(b) of D.C. Law 8-178 provided that if the covenant required by § 2 of the act is not filed within 2 years of October 2, 1990, the act shall expire.

Section 2 of D.C. Law 10-197 provided that the Council accepts the dedication of land and approves the establishment of building restriction lines necessary to create a minor street in Square 5969 near Mississippi Avenue, S.E., and 4th Street, S.E., as shown on the Surveyor's plat filed under S.O. 92-124.

§ 7-445. Area between property line and building restriction line.

Any area between the property line and the building restriction line shall be considered as private property set aside and treated as public space under the care and maintenance of the property owner. The use of this area shall be controlled by the District of Columbia police regulations with respect to the use of public space and the projection of buildings beyond the building line. The

District shall have a right-of-way through this area for sewers and water mains free of charge. The Mayor may build sidewalks on this area if in the judgment of the Mayor the space between the street lines is not sufficient to permit the construction of sidewalks within the street lines. (Mar. 10, 1983, D.C. Law 4-201; § 305, 30 DCR 148.)

Cross references. — As to application of this chapter to condemnation proceedings to establish building lines on streets, see § 5-203. **Legislative history of Law 4-201.** — See note to § 7-411.

§ 7-446. Improvement of street — Prerequisites.

(a) Prior to the improvement or issuance of a permit to improve a street that has been acquired for street purposes by the District but has neither been improved nor used as a public right-of-way for vehicles within 10 years of its acquisition, the Mayor shall submit a proposed street improvement, a proposed resolution to consider the proposed improvement, and supporting documents regarding the proposed improvement to the Council for a 45-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess. If the Council does not approve or disapprove the proposed improvement, in whole or in part, by resolution within this 45-day review period, the proposed improvement shall be deemed approved, and the Mayor may improve or issue a permit to improve the street.

(b) Prior to submitting the resolution to the Council required in subsection (a) of this section, the Mayor shall solicit comments on the proposed improvement from appropriate executive branch agencies and public utilities, the Advisory Neighborhood Commission within whose area the street is located, and each owner of property within the squares adjacent to the street to be improved.

(c) The supporting documents required to be submitted to the Council by subsection (a) of this section shall include at a minimum:

(1) A Surveyor's plat showing the street proposed to be improved; a listing by name, address, and lot and square numbers of each owner of property within the squares adjacent to the street to be improved; and the date and method of acquisition by the District of the street;

(2) Comments on the proposed improvement from appropriate District agencies and public utilities, including information regarding:

(A) Any building or development plans and any filed zoning cases related to the proposed improvement;

(B) The conformity of the proposed improvement and any associated development with the policies and land use designations set forth in the District of Columbia Comprehensive Plan Act of 1984;

(C) The present and future traffic needs to be served by the proposed improvement, any alternative means of serving those needs that have been considered, and an assessment of the impact of the proposed improvement and any associated development on traffic circulation, parking availability, and environmental conditions in the surrounding area;

(D) The total costs associated with the proposed improvement, including the costs of the proposed improvement and future maintenance of the street, and whether those costs are to be borne by the District or by a private party;

(E) The probable assessed value of the land to be improved for street purposes, and the existing condition and use of this land;

(F) The assessed values of the land and buildings on property within the squares that abut the street to be improved; and

(G) Any requirements or easements to be established as conditions to approval of the proposed improvement; and

(3) Certification by the Mayor or the Mayor's agent that the affected Advisory Neighborhood Commission and each owner of property within the squares adjacent to the street to be improved has been notified about the proposed improvement, and copies of any comments on the proposed improvement that have been received by the executive branch from the Advisory Neighborhood Commission, property owners, or any other persons.

(d) This section shall not apply to a proposal that consists of:

(1) Rehabilitation, repair, or reconstruction of a street that is already being used as a public right-of-way for vehicles at the time of the proposal; or

(2) Widening, realignment, or extension by 10 feet or less of the pavement of a street that is already being used as a public right-of-way for vehicles at the time of the proposal. (Mar. 10, 1983, D.C. Law 4-201, § 306, as added May 10, 1988, D.C. Law 7-106, § 2(a), 35 DCR 2170.)

Section references. — This section is referred to in 7-447.

Legislative history of Law 7-106. — Law 7-106, the "New Streets or Alleys Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-100, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Febru-

ary 16, 1988 and March 1, 1988, respectively. Signed by the Mayor on March 16, 1988, it was assigned Act No. 7-148 and transmitted to both Houses of Congress for its review.

References in text. — The "District of Columbia Comprehensive Plan Act of 1984," referred to in subsection (c)(2)(B), is D.C. Law 5-76.

§ 7-447. Same — Rules.

(a) Within 6 months of May 10, 1988, the Mayor shall, pursuant to subtitle I of chapter 15 of Title 1, issue rules to govern the procedures and standards for acquiring and improving streets and alleys in the District of Columbia. These rules shall include the establishment of:

(1) Procedures by which notification and opportunity to comment shall be provided to the Advisory Neighborhood Commission within whose area the street or alley is located;

(2) Procedures by which notification and opportunity to comment shall be provided to each owner of property within the squares adjacent to the street to be acquired or improved and within the square in which an alley is to be acquired or improved; and

(3) Standards for making a determination that the acquisition or improvement of a street or alley would be in the public interest, for evaluating the comments received from the affected Advisory Neighborhood Commission and

property owners within whose area the street or alley is located, and for assessing the criteria set forth in § 7-446(c)(2).

(b) This section shall not apply to a proposal that consists of:

(1) Rehabilitation, repair, or reconstruction of a street or alley that is already being used as a public right-of-way for vehicles at the time of the proposal; or

(2) Widening, realignment, or extension by 10 feet or less of the pavement of a street or alley that is already being used as a public right-of-way for vehicles at the time of the proposal. (Mar. 10, 1983, D.C. Law 4-201, § 307, as added May 10, 1988, D.C. Law 7-106, § 2(a), 35 DCR 2170.)

Legislative history of Law 7-106. — See Law 7-106, “New Street or Alley Amendment Act of 1988”. — See Mayor’s Order note to § 7-446. 88-162, July 11, 1988.

Delegation of authority pursuant to D.C.

§ 7-448. Submission of highway plan.

(a) Within 1 year of May 10, 1988, the Mayor shall submit a report to the Council on the highway plan for the District of Columbia.

(b) The report shall include:

(1) An updated list of each street that has been acquired but has not been improved and does not function as a public right-of-way for vehicles, including the location of the street, the date and method of approval of the street on the highway plan if applicable, and the date and method of acquisition of the street by the District;

(2) An updated list of each street on the highway plan that has not been acquired by the District, including the location of the street and the date and method of approval of the street on the highway plan; and

(3) A list of each unimproved acquired street and of each unacquired street on the highway plan determined by the Mayor to be no longer necessary for present or future street purposes, accompanied by proposed legislation and supporting documents to close these unimproved acquired streets and to remove these unacquired streets from the highway plan. (Mar. 10, 1983, D.C. Law 4-201, § 308, as added May 10, 1988, D.C. Law 7-106, § 2(a), 35 DCR 2170.)

Legislative history of Law 7-106. — See Law 7-106, “New Street or Alley Amendment Act of 1988”. — See Mayor’s Order note to § 7-446. 88-162, July 11, 1988.

Delegation of authority pursuant to D.C.

§ 7-449. Official street map; periodic publication; contents; availability.

(a) Within 2 years of May 10, 1988, and every 5 years thereafter, the Mayor shall publish an official street map that delineates each street and property square in the District of Columbia.

(b) This map shall distinguish between:

(1) Streets that have been improved, constructed, or paved;

(2) Streets that have been acquired but have not been improved, constructed, or paved; and

(3) Streets that are on the highway plan but have not been acquired and have not been improved, constructed, or paved.

(c) This map shall be available for review in every public library in the District and be available for sale by the District of Columbia Office of Documents. (Mar. 10, 1983, D.C. Law 4-201, § 309, as added May 10, 1988, D.C. Law 7-106, § 2(a), 35 DCR 2170.)

Legislative history of Law 7-106. — See note to § 7-446.

Delegation of authority pursuant to D.C.

Law 7-106, "New Street or Alley Amendment Act of 1988". — See Mayor's Order 88-162, July 11, 1988.

Subchapter IV. Naming of Public Spaces.

§ 7-451. Scope of Council's authority.

The Council may name or change the name of any public street, alley, circle, bridge, building, park, or other public place or property referred to in this subchapter as "public space" in the District of Columbia. (Mar. 10, 1983, D.C. Law 4-201, § 401, 30 DCR 148.)

Section references. — This section is referred to in § 1-337.

Legislative history of Law 4-201. — See note to § 7-411.

Designation of Raoul Wallenberg Place. — Section 132 of H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that the portion of 15th Street, Southwest, located between Maine and Independence Avenues shall hereafter be known and designated as "Raoul Wallenberg Place", and any law, regulation, map, document or other record of the United States and the District of Columbia which refers to that portion of such street shall be deemed to refer to "Raoul Wallenberg Place".

Designation of Francis Anderson Gregory Regional Branch Library. — Section 2 of D.C. Law 6-150 provided that the Council renamed the regional branch library known as the Fort Davis Regional Branch Library located at 3660 Alabama Avenue, S.E., Washington, D.C., as the Francis Anderson Gregory Regional Branch Library in recognition of the contributions of Francis Anderson Gregory in the field of education.

Designation of Patricia Roberts Harris Drive. — Section 3 of D.C. Law 7-102 provided that pursuant to § 7-451, the minor street created by the dedication referred to in section 2 shall be named Patricia Roberts Harris Drive. Section 2 of D.C. Law 7-102 provided that pursuant to § 7-444, the Council of the District

of Columbia accepts the dedication of land and approves the establishment of building restriction lines necessary to create a minor street in Square 4325 connecting 31st Place, N.E., and Fort Lincoln Drive, N.E., in Fort Lincoln New Town, as shown in the Surveyor's plat filed under S.O. 85-189.

Designation of Officer Kevin J. Welsh Memorial Bridge. — Section 2 of D.C. Law 7-193 provided that the Council of the District of Columbia designates the western structure of the 11th Street Bridge over the Anacostia River, which is part of Interstate 295 southbound, as the Officer Kevin J. Welsh Memorial Bridge.

Erection of signs at Sakharov Plaza. — Section 132 of § 101(d) of Pub. L. 99-591, the D.C. Appropriation Act, 1987, provided that the District of Columbia shall construct three signs which contain the words, "Sakharov Plaza". These signs shall be placed immediately above existing signs on the corners of 16th and L and 16th and M Streets, Northwest. These should be similar to signs used by the city to designate the location of Metro stations. In addition, a sign shall be placed on city property directly adjacent to, or directly in front of, 1125 16th Street designating the actual location of Andrei Sakharov Plaza. Hereafter the proper address of the Soviet Embassy in Washington, District of Columbia, shall be No. 1 Andrei Sakharov Plaza.

Designation of Washington Avenue. — Section 2 of D.C. Law 8-39 provided that pur-

suant to § 7-451, Canal Street, S.W., between Independence Avenue, S.W. and South Capital Street, shall be named Washington Avenue, S.W.

Designation of Grant Place, N.E., Burnham Place, N.E., Barnes Street, N.E., Albert Irvin Cassell Place, N.E., Franklin Delano Roosevelt Place, N.E., and Parkside Place, N.E. — Section 4 of D.C. Law 8-81 provided that the minor streets created by the closings referred to in § 2 of D.C. Law 8-81 and by dedications referred to in § 3 of D.C. Law 8-81 shall be named or renamed Grant Place, N.E., Burnham Place, N.E., Barnes Street, N.E., Albert Irvin Cassell Place, N.E., Franklin Delano Roosevelt Place, N.E., and Parkside Place, N.E., as shown on the Surveyor's plat filed under S.O. 88-212.

Designation of Officer Dana E. Harwood Memorial Pier. — Section 2 of D.C. Law 8-115 provided that pursuant to § 7-451, the Council of the District of Columbia designated Pier 5, which is located at 550 Maine Avenue S.W., as the Officer Dana E. Harwood Memorial Pier.

Designation of Windy Court and Derby Lane. — Section 2 of D.C. Law 8-174 provided that pursuant to § 7-451, the Council names the public alleys in Square 991 bounded by 11th Street, S.E., 12th Street, S.E., South Carolina Avenue, S.E., and D Street, S.E., as "Windy Court" and "Derby Lane", respectively, as shown on the Surveyor's plat filed under S.O. 89-282.

Designation of Carlos Manuel Rosario Adult Education Center. — Section 3 of D.C. Law 8-177 provided that, pursuant to § 7-451, the Council hereby renames the adult education center presently known as the Gordon Adult Education Center as the "Carlos Manuel Rosario Adult Education Center". Section 4 of D.C. Law 8-177 provided that after October 2, 1990, the Surveyor of the District of Columbia shall record in the Office of the Surveyor "Carlos Manuel Rosario Adult Education Center" as the name of the adult education center located at 35th and T Streets, N.W. The Council requests the Board of Education to erect appropriate signs at this adult education center in accordance with this act.

Designation of 7th Street, S.E., Oxon Run Road, S.E., and Edward Eugene Cornwell, Jr., Drive, S.E. — Section 3 of D.C. Law 8-178 provided that pursuant to § 7-451, the minor streets created by the dedications referred to in § 2 of D.C. Law 8-178 shall be named, respectively, as 7th Street, S.E., Oxon Run Road, S.E., and Edward Eugene Cornwell, Jr., Drive, S.E., as shown on the Surveyor's plat filed under S.O. 89-276. Section 4(b) of D.C. Law 8-178 provided that if the covenant required by § 2 of the act is not filed within 2 years of October 2, 1990, the act shall expire.

Designation of Naylor Court, N.W. — Section 2 of D.C. Law 8-194 provided that pursuant to § 7-451 and notwithstanding § 7-454, the north-south public alleys in Square 367, bounded by N Street, N.W., O Street, N.W., 9th Street, N.W., and 10th Street, N.W., are hereby designated as "Naylor Court, N.W."

Designation of Dwight David Eisenhower Freeway. — Section 2 of D.C. Law 8-223 provided that pursuant to § 7-451, a portion of Interstate 395 known as the Southwest Freeway, which is located between the 14th Street bridges and the 3rd Street tunnel, known as the Center Leg Freeway, shall be named "Dwight David Eisenhower Freeway"; and that a meaningful part of the full name cited in subsection (a) of this section may be used on each street sign that designates this name.

Designation of H. Carl Moultrie I Courthouse of the District of Columbia. — Section 3 of D.C. Law 8-230 provided that pursuant to § 7-451, the District of Columbia Courthouse is hereby named the "H. Carl Moultrie, I, Courthouse of the District of Columbia" in honor of H. Carl Moultrie, I.

Designation of Spring of Freedom Street. — Section 2 of D.C. Law 9-59 provided that pursuant to § 7-451, the portion of Linnean Avenue, N.W., in Ward 3 between Tilden Street, N.W., and Shoemaker Street, N.W., is designated as the "Spring of Freedom Street".

Designation of Queen's Stroll Place. — D.C. Law 9-61 provided that pursuant to § 7-451, Drake Place, S.E., in Ward 7, parallel and between D and E Streets, S.E., and between 50th and 54th Streets, S.E., is designated as "Queen's Stroll Place".

Designation of Hugh A. Johnson, Jr., Park. — Section 2 of D.C. Law 9-68 provided that the park located at South Dakota Avenue and Irving Street, N.E., shall be named the "Hugh A. Johnson, Jr., Park".

Designation of Juanita E. Thornton-Shepherd Park Branch Library. — Section 2 of D.C. Law 9-78 provided that the Council renamed the Shepherd Park Branch of the District of Columbia Public Library, at 7420 Georgia Avenue, N.W., as the Juanita E. Thornton-Shepherd Park Branch of the District of Columbia Public Library. Section 4 of D.C. Law 9-78 provided that the act shall apply on September 15, 1992.

Designation of Carbery Place. — Section 2 of D.C. Law 9-117 provided that pursuant to this section, the Council of the District of Columbia names the public alley that abuts lot 29, in Square 812, bounded by 4th Street, 5th Street, and D Street, N.E., as "Carbery Place".

Designation of Zei Alley. — Section 2 of D.C. Law 9-162 provided that the Council of the District of Columbia designates the public alley

in Square 220, bounded by 14th Street, 15th Street, H Street, and I Street, N.W., running east to west between 14th and 15th Streets, N.W., in Ward 2, as Zei Alley.

Designation of Islamic Way. — Section 2 of D.C. Law 9-172 provided that the Council of the District of Columbia designates the 1500 block of 4th Street, N.W., between P and Q Streets, N.W., in Ward 5, as Islamic Way.

Designation of Estelle Simms, Bloomingdale, Edgewood, Eckington (BEE) Civic Park. — Section 2(a) of D.C. Law 9-195 provided that the small park located at Rhode Island Avenue and U Street, N.W. (Lot 1, Square 3112), shall be named the Estelle Simms, Bloomingdale, Edgewood, Eckington (BEE) Civic Park.

Section 2(b) of D.C. Law 9-195 provided that a meaningful part of the full name cited in section 2(a) of Law 9-195 may be used on a park sign that designates this name.

Designation of Mitch Snyder Place. — Section 2 of D.C. Law 9-220 provided that the Council of the District of Columbia designated the 400 block of 2nd Street, N.W., between D and E Streets, N.W., as Mitch Snyder Place. The 400 block of 2nd Street, N.W., shall concurrently be known as 2nd Street and Mitch Snyder Place.

Designation of Malcolm X Avenue. — Section 2 of D.C. Law 9-225 provided that the Council of the District of Columbia designates the portion of Portland Street, S.E., between 9th Street, S.E. and South Capitol Street, S.E., as Malcolm X Avenue.

Designation of Ridgecrest Court. — Section 2 of D.C. Law 9-242 provided that pursuant to this section, the Council of the District of Columbia designates the portion of Shipley Terrace, S.E., between the 1900 block and the 2100 block, as "Ridgecrest Court."

Designation of John A. Wilson Building. — Section 3 of D.C. Law 10-69 provided that pursuant to § 7-451, the District Building, located at 1350 Pennsylvania Avenue, N.W., is hereby renamed the "John A. Wilson Building."

Designation of St. Francis de Sales Place. — Section 2 of D.C. Law 10-81 provided that pursuant to § 7-451, the Council of the District of Columbia designates the 2000 block of Fulton Place, N.E., as "St. Francis de Sales Place."

Designation of Fraser Court. — Section 2 of D.C. Law 10-93 provided that pursuant to §§ 7-451 and 7-453, the Council of the District of Columbia names the public alley in Square 110, running north to south between the 1900 block of R Street, N.W. and S Street, N.W. as "Fraser Court."

Designation of Theodore R. Hagans, Jr., Center. — Section 2 of D.C. Law 10-141 provided that pursuant to this section, the Fort Lincoln Cultural Center located at 31st Place and Fort Lincoln Drive, N.E., shall be named the Theodore R. Hagans, Jr., Center.

Dedication of Woodcrest Drive. — Section 3 of D.C. Law 10-197 provided that the minor street created by the dedication referred to in § 2 of that act shall be named Woodcrest Drive.

Designation of Maurice T. Turner, Jr., Education and Training Center. — Section 2 of D.C. Law 10-239 provided that pursuant to § 7-451, the Metropolitan Police Academy located 4665 Blue Plains Drive, S.W., is designated the "Maurice T. Turner, Jr., Education and Training Center."

Section 3 of D.C. Law 10-239 provided that pursuant to § 7-455, the act shall apply on June 16, 1995.

§ 7-452. System of designations.

In naming any street or circle the following system shall be adhered to:

(1) The broad diagonal highways shall be designated as avenues, and shall be named after states and territories of the United States.

(2) Streets running north and south shall be designated with numbers consecutively in each direction from the meridian of the United States Capitol. Any street not in exact alignment with those streets to its north and south shall be given the same designation as the street which is most nearly in line with its alignment.

(3) Streets running east and west shall be designated with the letters of the alphabet until these letters are exhausted. Beyond this they shall have names of 1 syllable, then names of 2 and 3 syllables, all arranged in alphabetical order. Any street not in exact alignment with those streets to its east and west shall be given the same designation as the street most nearly in line with its alignment.

(4) Streets which do not form an essential part of the rectangular system of streets shall be designated as roads, drives, or places and shall be named after a prominent local feature in their vicinity, or by such other distinguishing designation as the Council may determine to be appropriate.

(5) Circles shall be named after distinguished persons who have been prominent in the service of this country. (Mar. 10, 1983, D.C. Law 4-201, § 402, 30 DCR 148; Apr. 26, 1988, D.C. Law 7-102, § 4, 35 DCR 2053.)

Section references. — This section is referred to in § 1-337.

Legislative history of Law 4-201. — See note to § 7-411.

Legislative history of Law 7-102. — Law 7-102, the “Dedication and Designation of Patricia Roberts Harris Drive, N.E., S.O. 85-189, and Street Naming Amendment Act of

1988,” was introduced in Council and assigned Bill No. 7-255, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 2, 1988 and February 16, 1988, respectively. Signed by the Mayor on March 2, 1988, it was assigned Act No. 7-147 and transmitted to both Houses of Congress for its review.

§ 7-453. Alleys.

The Council shall not name any alley in the District of Columbia except when the alley provides the only access to a residential or commercial property. (Mar. 10, 1983, D.C. Law 4-201, § 403, 30 DCR 148.)

Section references. — This section is referred to in § 1-337.

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-454. Duplicative names prohibited.

No public space in the District of Columbia shall be given the same name as that given another public space in the District. (Mar. 10, 1983, D.C. Law 4-201, § 404, 30 DCR 148.)

Section references. — This section is referred to in § 1-337.

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-455. Use of living persons’ names prohibited; use of deceased persons’ names restricted.

No public space in the District shall be named in honor of any living person, or in honor of any person who has been deceased less than 2 years, unless the deceased person was a President or Vice President of the United States, a United States Senator or Representative, a Mayor of the District of Columbia, or a member of the Council of the District of Columbia. (Mar. 10, 1983, D.C. Law 4-201, § 405, 30 DCR 148.)

Section references. — This section is referred to in § 1-337.

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-456. Extent of name to be used; use on street signs.

The Council shall use the person’s given name as well as the person’s surname in naming a public space in the District of Columbia in honor of a

person. If the full name exceeds 21 characters a meaningful part of the name may be used on the street signs. (Mar. 10, 1983, D.C. Law 4-201, § 406, 30 DCR 148.)

Section references. — This section is referred to in § 1-337.

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-457. Submission of bill to involved advisory neighborhood commission.

The Council shall submit a copy of the bill for review and comment to the advisory neighborhood commission(s) in whose area the public space to be named or renamed is located, at least 30 days prior to Council consideration of a bill to rename a public space in the District of Columbia. (Mar. 10, 1983, D.C. Law 4-201, § 407, 30 DCR 148.)

Section references. — This section is referred to in § 1-337.

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-458. Proposal to name or rename to be submitted to affected property owners.

The person or persons who initiate a proposal to name or rename a street or alley in the District of Columbia shall submit in writing a copy of the proposal to each owner of property abutting the affected street or alley. (Mar. 10, 1983, D.C. Law 4-201, § 408, 30 DCR 148.)

Section references. — This section is referred to in § 1-337.

Legislative history of Law 4-201. — See note to § 7-411.

§ 7-459. Rights of certain boards preserved.

Nothing in this chapter shall prohibit the Board of Education, the Board of Library Trustees, or the Board of Trustees of the University of the District of Columbia from naming or renaming the public buildings or spaces under their respective jurisdictions. (Mar. 10, 1983, D.C. Law 4-201, § 409, 30 DCR 148.)

Section references. — This section is referred to in § 1-337.

Legislative history of Law 4-201. — See note to § 7-411.

Subchapter V. Miscellaneous Provisions.

§ 7-471. Validity of condemnations or closings pursuant to repealed law not affected.

The validity of any condemnation proceeding or any street or alley closing pursuant to any section of law repealed by this act shall not be affected by its repeal. (Mar. 10, 1983, D.C. Law 4-201, § 601, 30 DCR 148.)

Legislative history of Law 4-201. — See note to § 7-411.

References in text. — “This act,” referred to in this section, is D.C. Law 4-201.

§ 7-472. Authority to issue rules.

The Mayor may issue rules necessary to implement and enforce this chapter. (Mar. 10, 1983, D.C. Law 4-201, § 602, 30 DCR 148.)

Legislative history of Law 4-201. — See note to § 7-411.

CHAPTER 5. BRIDGES, VIADUCTS, AND SUBWAYS.

Sec.

- 7-501. Control of bridges; exception.
- 7-502. Construction and repair of bridges over railway and canal rights-of-way.
- 7-503. Bridges across Rock Creek.
- 7-504. Pennsylvania Avenue Bridge.
- 7-505. Anacostia Bridge.
- 7-506. John Philip Sousa Bridge.
- 7-507. Highway Bridge.
- 7-508. Rochambeau Bridge.
- 7-509. Construction of power boats; exception; "power boats" defined.
- 7-510. Monroe Street Bridge.
- 7-511. Francis Scott Key Bridge.
- 7-512. South Dakota Avenue Bridge.
- 7-513. Connecticut Avenue Bridge over Klinge Valley.
- 7-514. Benning Bridge.
- 7-515. Fern and Varnum Streets and Eastern Avenue Viaducts.

Sec.

- 7-516. Certain grade crossings to be closed after completion of Fern Street Viaduct.
- 7-517. Van Buren Street Subway.
- 7-518. Grade crossing at Lamond closed.
- 7-519. Cedar Street Subway.
- 7-520. Michigan Avenue Viaduct — Construction; cost; highway grade closed.
- 7-521. Same — Use by street railway companies.
- 7-522. Highway grade crossing at Michigan Avenue closed.
- 7-523. Subway under Baltimore and Ohio tracks in vicinity of Chestnut Street, Fern Place, and Piney Branch Road.
- 7-524. Calvert Street Bridge.
- 7-525. Francis Case Memorial Bridge.
- 7-526. Washington Channel Bridge.

§ 7-501. Control of bridges; exception.

The control of bridges, except the Aqueduct Bridge across Rock Creek, in the District of Columbia, is hereby conferred on the Mayor of the District of Columbia, and the Council of the District of Columbia is hereby required to make such proper regulations as it may deem necessary for the safety of the public using said bridges, and for the lighting and the police control of the same. (Mar. 3, 1893, 27 Stat. 544, ch. 199; 1973 Ed., § 7-501.)

Cross references. — As to rules and regulations for protection of life, health, and property, see § 1-319.

As to contracts and procurement, see generally, Chapters 11 and 11A of Title 1.

As to powers and duties of Mayor, see § 7-102.

As to lighting public places, see §§ 7-701 to 7-710.

As to railroads to pay cost of lighting bridges and subways, see § 7-709.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(169)

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-502. Construction and repair of bridges over railway and canal rights-of-way.

Appropriations made after June 7, 1924, for the construction and repair of bridges shall be available for repairing, when necessary, any bridge carrying a public street over the right-of-way or property of any railway company, or for

constructing, reconstructing, or repairing in such manner as shall in the judgment of the Mayor of the District of Columbia be necessary reasonably to accommodate public traffic, any bridge required to carry or carrying such traffic in a public street over the right-of-way or property of any canal company operating as such in the District of Columbia, on the neglect or refusal of such railway or canal company to do such work when notified and required by the Mayor, and the amounts thus expended shall be a valid and subsisting lien against the property of such railway company or of such canal company, and shall be collected from such railway company or from such canal company in the manner provided in § 7-604, and shall be deposited in the Treasury to the credit of the General Fund of the District of Columbia in the manner provided by law. (June 7, 1924, 43 Stat. 550, ch. 302; June 28, 1944, 58 Stat. 533, ch. 300, § 18; 1973 Ed., § 7-502.)

Cross references. — As to construction, cost, and repair of viaducts and subways, see §§ 7-1410 to 7-1412, 7-1414, 7-1415, 7-1420 to 7-1427, and 7-1428.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-503. Bridges across Rock Creek.

The entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the bridge is not being paved, and one-half the cost of other paving, repaving, or maintenance of paving between its track and for 2 feet outside the outer rails, and the excess cost of construction and maintenance of any bridge across Rock Creek due to the existence or installation by a street railway or railways of its or their tracks on such bridge shall be borne by the said railway company or companies, and shall be collected in the same manner as the cost of laying pavements between the rails and tracks of street railways as provided for in § 7-604. The amounts thus collected shall be deposited to the credit of the appropriation for the fiscal year in which they are collected. (Aug. 7, 1894, 28 Stat. 252, ch. 232; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3; 1973 Ed., § 7-503.)

Section references. — This section is referred to in § 7-504.

§ 7-504. Pennsylvania Avenue Bridge.

The East Washington Heights Traction Railroad Company shall bear the cost of maintenance, construction, and repair of the Pennsylvania Avenue Bridge over the Anacostia River in like manner and under the same conditions

as are provided by § 7-503. (July 1, 1902, 32 Stat. 636, ch. 1360; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3, 1973 Ed., § 7-504.)

§ 7-505. Anacostia Bridge.

The Anacostia and Potomac River Railroad Company shall pay the entire cost of the pavement between the exterior rails of its tracks on said bridge (the Anacostia Bridge) and for a distance of 2 feet from the said exterior rails of said tracks on each side thereof and the cost of the entire floor system supporting said pavement, to be collected in the same manner as the cost of laying pavements between the rails and tracks of street railways as provided for in § 7-604 and paid for each fiscal year into the Treasury of the United States to the credit of the General Fund of the District of Columbia: Provided further, that any other railroad company on or after April 27, 1904, authorized by Congress to use said bridge shall have the right to use the tracks of the Anacostia and Potomac River Railroad Company thereon upon such reciprocal trackage and such compensation as may be mutually agreed upon, and in case of failure to reach such an agreement that the Superior Court of the District of Columbia shall, upon petition filed by either party, fix and determine the same. And after April 27, 1904, one-half of the cost of the maintenance and repairs of this bridge shall be borne by the said railway company or companies, and shall be collected in the same manner as the cost of laying pavements between the rails and tracks of street railways, and paid into the treasury, as provided for above. The entire cost of maintenance of such underfloor construction as may be necessary in order that the cars of said company may be propelled over said bridge by underfloor electrical conductors or cables shall, after March 3, 1905, be borne by said railroad company, and no cars shall be propelled across said bridge unless all electrical conductors or cables furnishing power for the propulsion of the same shall be placed under floor of said bridge. (Apr. 27, 1904, 33 Stat. 372, ch. 1628; Mar. 3, 1905, 33 Stat. 893, ch. 1406; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(23); 1973 Ed., § 7-505.)

Cross references. — As to joint use of facilities by utility companies, see § 43-502.

Act of 1904 was not repealed by Act of

1905. *Hazen v. Washington Ry. & Elec. Co.*, 74 F.2d 461 (D.C. Cir. 1934), cert. denied, 294 U.S. 714, 55 S. Ct. 512, 79 L. Ed. 1247 (1935).

§ 7-506. John Philip Sousa Bridge.

The bridge authorized to be erected over the Anacostia River, in the District of Columbia, in the line of Pennsylvania Avenue shall be, on and after March 7, 1939, known as the John Philip Sousa Bridge. (Mar. 7, 1939, 53 Stat. 512, ch. 8; 1973 Ed., § 7-506.)

§ 7-507. Highway Bridge.

The jurisdiction and control of the Highway Bridge across the Potomac River, including appropriations and employees, shall be under the Mayor of the

District of Columbia. The Highway Bridge shall be for highway traffic. The entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the bridge is not being paved, and one-half the cost of other paving, repaving, or maintenance of paving between its track and for 2 feet outside the outer rails, and the excess cost of construction and maintenance of the bridge due to the existence or installation of its tracks thereon shall be paid by the street railway company or companies using the same under such regulations as the Mayor of the District of Columbia shall prescribe: Provided, that all street railroads chartered or that may hereafter be chartered by Congress shall have the right to cross said bridge upon terms mutually agreed upon with the Washington, Alexandria, and Mount Vernon Railway Company or in case of disagreement, upon terms determined by the United States District Court for the District of Columbia which is authorized and directed to give hearing to the interested parties and to fix the terms of joint trackage. (Feb. 12, 1901, 31 Stat. 773, ch. 353, § 12; July 1, 1902, 32 Stat. 598, ch. 1352; Feb. 22, 1921, 41 Stat. 1117, ch. 70, § 1; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; 1973 Ed., § 7-507.)

Cross references. — As to joint use of facilities by utility companies, see § 43-502.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Replacement of Highway Bridge. — See Act of October 4, 1966, 80 Stat. 875, Pub. L. 89-627.

§ 7-508. Rochambeau Bridge.

The bridge built in lieu of the Long Bridge shall be for railroad purposes only and for 2 or more railway tracks. The Baltimore and Potomac Railroad Company shall maintain, and keep in repair said bridge at its own cost and expense, and shall maintain an efficient draw in said bridge, operating the same so as not to unnecessarily impede the free navigation of the Potomac River at any hour of the day or night, and shall give other railroad companies the right to pass over said bridge upon such reasonable terms as may be agreed upon between the companies or prescribed by Congress. (Feb. 12, 1901, 31 Stat. 772, ch. 353, § 11; 1973 Ed., § 7-508.)

Cross references. — As to joint use of facilities by utility companies, see § 43-502.

§ 7-509. Construction of power boats; exception; “power boats” defined.

(a) All tugboats using the Potomac River at the place or places where the same is spanned by the 2 certain bridges in said act provided for, namely the Railway Bridge and the Highway Bridge, are required to equip and fit, not later than July 1, 1909, all smokestacks thereof or other vertical projections with hinges or other mechanical device so as to permit the same to be lowered to the level of the top of the pilothouse of such boats: Provided, that all such tugboats the pilothouse of which will not pass under such bridges may be exempted from the operations of the provisions hereof, upon application made to the Secretary of the Army and his approval thereof: Provided further, that all tugboats after March 4, 1909, built or purchased, or not on said date actually engaged in business on the Potomac River at the places aforesaid, must have their dimensions approved by the Secretary of the Army before being permitted to use and operate the same on the Potomac River at the places above mentioned: And provided further, that the provisions hereof shall not apply to such tugboats as may, by reason of their structure, be able to pass under said 2 bridges, respectively, without the necessity of operating the draws thereof.

(b) The provisions of this section are applicable to “power boats,” meaning any boat, vessel, or craft propelled by machinery, whether the machinery be only principal or auxiliary power of propulsion. (Mar. 4, 1909, 35 Stat. 1066, ch. 315; Mar. 4, 1915, 38 Stat. 1053, ch. 142, § 6; 1973 Ed., § 7-509.)

References in text. — The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by § 205(a) of the Act of July 26, 1947, 61 Stat. 501, ch. 343. Section 205(a) of the Act of July 26, 1947 was

repealed by § 53 of the Act of August 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of the Act of August 10, 1956, enacted Title 10 of the U.S. Code which continued the Department of the Army under the administrative supervision of a Secretary of the Army.

§ 7-510. Monroe Street Bridge.

No street railway company shall use the viaduct or bridge or any approaches thereto authorized by the Act of July 3, 1930, to carry Monroe Street Northeast over the tracks of the Baltimore and Ohio Railroad Company, for its tracks until such company shall have paid to the Collector of Taxes of the District of Columbia a sum equal to one-fourth of the cost of such viaduct or bridge and approaches, which sum shall be paid to the Collector of Taxes for the District of Columbia for deposit to the credit of the District of Columbia. (Mar. 2, 1907, 34 Stat. 1130, ch. 2510; July 3, 1930, 46 Stat. 963, ch. 848; 1973 Ed., § 7-510.)

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of Gen-

eral Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was super-

seded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the

Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

§ 7-511. Francis Scott Key Bridge.

The jurisdiction or control of the Georgetown Bridge, to be known as the Francis Scott Key Bridge, across the Potomac River and approaches shall be under the Mayor of the District of Columbia. The said bridge shall be used as a highway for traffic, and for gas and water mains, power, telegraph and telephone wires or cables, and interurban railroads upon such conditions and for such compensation as may from time to time be prescribed by the Secretary of the Army: Provided, that the Washington and Old Dominion Railway, using the Aqueduct Bridge on May 18, 1916, shall be permitted, with the approval of the Secretary of the Army, to change its location so as to cross with a double track the new bridge and approaches herein provided for, and to connect its railway, located in Arlington County, Virginia, and in the District of Columbia, with the tracks of said new bridge; and that all plans for such change are to be approved by the Secretary of the Army: And provided further, that a standard system of electric propulsion shall be installed by said railway on said new bridge, and no dynamo furnishing power to this portion of the road of said railway shall be in any manner connected with the ground, and that the cost of paving and maintaining in good condition between the tracks and 2 feet outside thereof shall be paid by said railway: And provided further, that any electric railway shall have the right to use said new bridge and the double track above described upon terms determined by the Secretary of the Army, who is hereby authorized and directed to hear the interested parties and to fix the terms of joint trackage. (May 18, 1916, 39 Stat. 163, ch. 127, § 5; Feb. 28, 1923, 42 Stat. 1338, ch. 148, § 1; June 7, 1926, 44 Stat. 697, ch. 480, § 1; 1973 Ed., § 7-511.)

Cross references. — As to joint use of facilities by utility companies, see § 43-502.

References in text. — The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by § 205(a) of the Act of July 26, 1947, 61 Stat. 501, ch. 343. Section 205(a) of the Act of July 26, 1947, was repealed by § 53 of the Act of August 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of the Act of August 10, 1956, enacted Title 10 of the U.S.

Code which continued the Department of the Army under the administrative supervision of a Secretary of the Army.

Arlington County was substituted for Alexandria County, in the first proviso of the second sentence of this section, to update terminology.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-512. South Dakota Avenue Bridge.

No street railway company shall use the bridge authorized by the Act of March 3, 1917 (39 Stat. 1018), for its tracks until such company shall have paid to the Treasurer of the United States a sum equal to one-sixth of the total cost of said bridge, to the credit of the General Fund of the District of Columbia. (Mar. 3, 1917, 39 Stat. 1018, ch. 160; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; 1973 Ed., § 7-512.)

§ 7-513. Connecticut Avenue Bridge over Klinge Valley.

Any street railway company using the new Connecticut Avenue Bridge over Klinge Valley shall install thereon at its own expense an approved standard underground system and an overhead trolley system of street car propulsion, including trolley poles of approved design, and at its own expense shall thereafter maintain such underground and overhead construction and bear the cost of surfacing, resurfacing, and maintaining in good condition the space between the railway tracks and 2 feet exterior thereto, and shall defray the cost of excess construction occasioned by such use. (July 3, 1930, 46 Stat. 962, ch. 848; 1973 Ed., § 7-513.)

§ 7-514. Benning Bridge.

One-fifth of the cost of constructing the said bridge (in line of Benning Road over the Anacostia River) and approaches shall be borne and paid by the Washington Railway and Electric Company, its successors and assigns, to the Collector of Taxes of the District of Columbia, to the credit of the District of Columbia, and the same shall be a valid and subsisting lien against the franchises and property of the said railway company and shall constitute a legal indebtedness of said company in favor of the District of Columbia, and the said lien may be enforced in the name of the District of Columbia by a bill in equity brought by the Mayor of the District of Columbia in the Superior Court of the District of Columbia, or by any other lawful proceeding against the said railway company: Provided further, that after the completion of said bridge and approaches authorized by the act of June 29, 1932 (47 Stat. 355) no street railway company shall use said bridge or approaches until the said company shall have paid to the Collector of Taxes of the District of Columbia a sum equal to one-fifth of the cost of said bridge and approaches, which sum shall be paid to the Collector of Taxes of the District of Columbia for deposit to the credit of the District of Columbia. (June 29, 1932, 47 Stat. 355, ch. 308; June

25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(24); 1973 Ed., § 7-514.)

Cross references. — As to joint use of facilities by utility companies, see § 43-502.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. — See note to § 7-510.

§ 7-515. Fern and Varnum Streets and Eastern Avenue Viaducts.

The viaducts and approaches thereto, to carry Fern and Varnum Streets over the tracks and right-of-way of the Baltimore and Ohio Railroad Company or the viaduct and approaches thereto to carry Eastern Avenue over the tracks and rights-of-way of the Philadelphia, Baltimore and Washington Railroad Company and the Baltimore and Ohio Railroad Company shall not be used by any street railroad company until said Companies shall have paid to the Collector of Taxes of the District of Columbia, a sum equal to one-fourth of the total cost of constructing said viaducts and approaches, to be applied to the credit of the District of Columbia. No limitation shall run against claims made by the District of Columbia under the provisions of this section. (Mar. 3, 1927, 44 Stat. 1352, ch. 306, § 1; 1973 Ed., § 7-515.)

Cross references. — As to cost of repairs and maintenance of bridges over railway and canal rights-of-way, see § 7-502.

Section references. — This section is referred to in § 7-1428.

Office of Collector of Taxes abolished. — See note to § 7-510.

§ 7-516. Certain grade crossings to be closed after completion of Fern Street Viaduct.

From and after the completion of the viaduct and approaches to carry Fern Street over the tracks and right-of-way of the Metropolitan branch of the Baltimore and Ohio Railroad Company, the highway grade crossing over the tracks and right-of-way of the said Baltimore and Ohio Railroad Company at Chestnut Street shall be forever closed against further traffic of any kind; and from and after the completion of the viaduct and approaches to carry Varnum Street over the tracks and right-of-way of the Metropolitan branch of the Baltimore and Ohio Railroad Company, the highway grade crossing over the tracks and right-of-way of the said railroad company at Bates Road shall be forever closed against further traffic of any kind, and from and after the

completion of the viaduct and approaches to carry Eastern Avenue over the tracks and right-of-way of the Philadelphia, Baltimore and Washington Railroad Company and the Baltimore and Ohio Railroad Company, the highway grade crossing over the tracks and rights-of-way of the said railroad companies at Quarles Street, shall be forever closed against further traffic of any kind. (Mar. 3, 1927, 44 Stat. 1354, ch. 306, § 4; 1973 Ed., § 7-516.)

Section references. — This section is referred to in § 7-1428.

§ 7-517. Van Buren Street Subway.

No street railway company shall use the subway and approaches to carry Van Buren Street under the tracks and right-of-way of the Metropolitan branch of the Baltimore and Ohio Railroad Company for its tracks until said Company shall have paid to the Collector of Taxes of the District of Columbia a sum equal to one-fourth of the total cost of said subway and approaches, to be applied to the credit of the District of Columbia. (Mar. 2, 1925, 43 Stat. 1096, ch. 395, § 1; 1973 Ed., § 7-517.)

Office of Collector of Taxes abolished. — See note to § 7-510.

§ 7-518. Grade crossing at Lamond closed.

The highway grade crossing formerly over the tracks and right-of-way of the Metropolitan branch of the Baltimore and Ohio Railroad Company at Lamond shall be forever closed against further traffic of any kind. (Mar. 2, 1925, 43 Stat. 1097, ch. 395, § 3; 1973 Ed., § 7-518.)

§ 7-519. Cedar Street Subway.

No street railway company shall use the subway herein authorized (to carry Cedar Street under the tracks of the Baltimore and Ohio Railroad Company) for its tracks until such company shall have paid to the Treasurer of the United States a sum equal to one-fourth of the total cost of said subway and bridge, to the credit of the General Fund of the District of Columbia. (May 18, 1910, 36 Stat. 388, ch. 248; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; 1973 Ed., § 7-519.)

§ 7-520. Michigan Avenue Viaduct — Construction; cost; highway grade closed.

The Mayor of the District of Columbia is authorized and directed to construct a viaduct and approaches to eliminate the crossing at grade of Michigan Avenue and the tracks and right-of-way of the Baltimore and Ohio Railroad Company, said viaduct to be constructed north of the present line of Michigan Avenue as may be determined by the Mayor of the District of Columbia in accordance with plans and profiles of said works to be approved by the said Mayor: Provided, that one-half of the total cost of constructing the said viaduct

and approaches shall be borne and paid by the said railroad company, its successors and assigns, to the Collector of Taxes of the District of Columbia to the credit of the District of Columbia, and the same shall be a valid and subsisting lien against the franchises and property of the said railroad company and shall constitute a legal indebtedness of said company in favor of the District of Columbia, and the said lien may be enforced in the name of the District of Columbia by a bill in equity brought by the said Mayor in the Superior Court of the District of Columbia, or by any other lawful proceeding against the said railroad company: Provided further, that from and after the completion of the said viaduct and approaches the highway grade crossing over the tracks and right-of-way of the said Baltimore and Ohio Railroad Company in line of present Michigan Avenue shall be forever closed against further traffic of any kind. (Mar. 3, 1927, 44 Stat. 1351, ch. 305, § 1; Feb. 12, 1931, 46 Stat. 1087, ch. 119; June 14, 1935, 49 Stat. 349, ch. 241, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(25); 1973 Ed., § 7-520.)

Section references. — This section is referred to in § 7-521.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. — See note to § 7-510.

Cited in *Ralph v. Hazen*, 93 F.2d 68 (D.C. Cir. 1938).

§ 7-521. Same — Use by street railway companies.

No street railway company shall use the viaduct or any approaches thereto authorized by § 7-520 for its tracks until the said company shall have paid to the Collector of Taxes of the District of Columbia a sum equal to one-fourth of the cost of said viaduct and approaches, which sum shall be deposited to the credit of the District of Columbia. (Mar. 3, 1927, 44 Stat. 1352, ch. 305, § 2; 1973 Ed., § 7-521.)

Office of Collector of Taxes abolished. — See note to § 7-510.

§ 7-522. Highway grade crossing at Michigan Avenue closed.

From and after the completion of the said viaduct and approaches, the highway grade crossing over the tracks and the right-of-way of the said Baltimore and Ohio Railroad Company at Michigan Avenue in the District of

Columbia shall be forever closed against further traffic of any kind. (Mar. 3, 1927, 44 Stat. 1352, ch. 305, § 4; 1973 Ed., § 7-522.)

§ 7-523. Subway under Baltimore and Ohio tracks in vicinity of Chestnut Street, Fern Place, and Piney Branch Road.

One-half of the total cost of constructing a subway under the tracks and right-of-way of the Baltimore and Ohio Railroad Company in the vicinity of Chestnut Street or of the intersection of Fern Place and Piney Branch Road, extended, and thereafter the cost of maintaining the structure within the limits of its right-of-way shall be borne and paid by the said Baltimore and Ohio Railroad Company, its successors and assigns, to the Collector of Taxes of the District of Columbia for the deposit to the credit of the District of Columbia, and the same shall be a valid and subsisting lien against the franchises and property of the said railroad company, and shall constitute a legal indebtedness against the said railroad company in favor of the District of Columbia, and said lien may be enforced in the name of the District of Columbia by a bill in equity brought by the Mayor of the District of Columbia in the Superior Court of the District of Columbia, or by any other legal proceeding against the said railroad company: Provided, that from and after the completion of the said subway and approaches, the highway grade crossing over the tracks and right-of-way of the said Baltimore and Ohio Railroad Company at Chestnut Street shall be forever closed against further traffic of any kind. (July 3, 1930, 46 Stat. 963, ch. 848; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(26); 1973 Ed., § 7-523.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. — See note to § 7-510.

§ 7-524. Calvert Street Bridge.

Any street railway company using the bridge constructed to replace the Calvert Street Bridge over Rock Creek, as authorized by the Act of June 16, 1933 (48 Stat. 229, ch. 93) shall install thereon, at its own expense, an approved underground system of streetcar propulsion and, at its own expense, shall thereafter maintain such underground construction, and bear the cost of surfacing and resurfacing and maintaining in good condition the space between the railway tracks and 2 feet exterior thereto as provided by law, and

shall defray the cost of excess construction occasioned by such use including the relocation and construction of closed plow pits at the west approach to the bridge in accordance with plans to be approved by the Mayor of the District of Columbia. (June 16, 1933, 48 Stat. 229, ch. 93; 1973 Ed., § 7-524.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-525. Francis Case Memorial Bridge.

The bridge crossing the Washington Channel of the Potomac River on Interstate Route 395, approximately 100 yards downstream from the outlet gate of the Tidal Basin, near the intersection of the extension of 13th and G Streets Southwest, shall be known and designated as the “Francis Case Memorial Bridge.” Any law, regulation, map, document, record, or other paper of the United States or of the District of Columbia in which such bridge is referred to shall be held to refer to such bridge as the “Francis Case Memorial Bridge.” (Sept. 25, 1965, 79 Stat. 838, Pub. L. 89-203, § 1; 1973 Ed., § 7-525.)

References in text. — Interstate Route 395 first sentence of this section to update terminology was substituted for Interstate Route 95 in the

§ 7-526. Washington Channel Bridge.

(a) The Secretary of the Interior is hereby authorized to provide for the construction, maintenance, and operation of a bridge, with visitor facilities, over the Washington Channel, from the vicinity of 10th Street Southwest to East Potomac Park in Washington, District of Columbia. The structure may be so designed and constructed as to provide facilities for the accommodation of visitors to the Nation’s Capital area, and to provide convenient and adequate access to East Potomac Park.

(b) The Secretary may obtain and use such lands or interests therein owned, controlled, or administered by the District of Columbia, the District of Columbia Redevelopment Land Agency, the Corps of Engineers, or any other Government agency, with the prior consent of such agency or agencies, as he shall consider necessary for the construction and operation of said bridge, without cost or reimbursement. Before construction is commenced, the location and plans for the bridge shall be approved by the Chief of Engineers and the Secretary of the Army subject to such conditions as they may prescribe, in accordance with § 525 (b) of Title 33, United States Code.

(c) The Secretary is authorized to enter into appropriate arrangements for the construction and operation of the bridge in accordance with the authority

contained in § 3 of Title 16, United States Code, as amended, except that any such arrangements need not be limited to a maximum term of 30 years. The bridge, at all times, shall be under the jurisdiction of the Secretary of the Interior, and shall be administered, operated, maintained, and policed as a part of the park system of the National Capital.

(d) The Secretary of the Interior shall cooperate with other federal and local agencies with respect to the construction and operation of the bridge by him and the construction and operation of associated facilities by such other federal and local agencies including the District of Columbia Redevelopment Land Agency which shall enter into appropriate arrangements by negotiation or public bid to: (1) Lease all or part of the land bounded by Maine Avenue, Ninth Street and the Southwest Freeway, Southwest, to provide for the construction, maintenance and operation of a structured automobile parking facility designed to accommodate visitors to East Potomac Park; and (2) provide for the construction of: (A) A public park or overlook, which park is to be maintained and operated by the National Park Service; and (B) roads providing access to the 10th Street Mall from the Southwest Freeway and to and from 9th Street, Southwest, which roads shall be maintained and operated by the District of Columbia. Any lease of the aforementioned area, executed by the District of Columbia Redevelopment Land Agency, shall provide appropriate easements for the construction, maintenance and operation of the aforesaid public park and roadways. Local agencies may enter into arrangements with the person, persons, corporation or corporations, as the Secretary may select pursuant to subsection (c) of this section for the construction and operation of necessary associated facilities otherwise authorized.

(e)(1) There is hereby established an Advisory Committee, which shall be composed of the Chairman, National Capital Planning Commission; the Chairman, Commission of Fine Arts; the Commissioner of the District of Columbia; the Chief of Engineers, United States Army; the Chairman, District of Columbia Redevelopment Land Agency; and 3 members to be appointed by the Secretary of the Interior from among the residents of the Metropolitan Washington area. The ex-officio members of the Committee may be represented by their designees.

(2) Members of the Committee shall serve without compensation, but the Secretary is authorized to pay any expenses reasonably incurred by the Committee in carrying out its responsibilities under this section.

(3) The Secretary shall designate 1 member of the Committee to be Chairman. The Committee shall act and advise by the affirmative vote of a majority of its members.

(4) The Secretary or his designee shall, from time to time, consult with and obtain the advice of the Committee with respect to matters relating to the design, construction, and operation of the bridge and any associated facilities.

(f) The construction and operation of the bridge shall be at no expense to the federal government, and there are hereby authorized to be appropriated such sums as may be necessary for maintenance of the bridge and to carry out the other purposes of this section. (Nov. 7, 1966, 80 Stat. 1417, Pub. L. 89-789, title I, § 111; 1973 Ed., § 7-526.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 6. REPAIR AND CONSTRUCTION.

Sec.

7-601 to 7-603. [Repealed].

7-604. Cost of construction and repairs; payments.

7-605. Removal of street railway tracks.

7-606. Water and gas mains, service pipes, and sewer connections.

7-607. Assessments for sidewalks and curbing.
7-608. Mayor to submit schedules of streets to be improved.

7-609. Improvement and repairs of alleys and sidewalks; construction of sewers and sidewalks.

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7-612. Paving or resurfacing roadway of streets, avenues, and roads.

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7-616. Same — Property abutting 2 or more streets, avenues, or roads.

7-617. Same — Roadway improvements and curbs and gutters completed after May 25, 1943.

7-618. Width of pavement of streets.

7-619. Minor changes in roadway width.

7-620. Cutting trenches in highways — Permit required; exceptions.

7-621. Same — Penalty; prosecution.

7-622. Use of bituminous macadam authorized.

7-623. Use of portable asphalt plant.

Sec.

7-624. Unexpended allotments for street paving made available for succeeding year.

7-625. Limitation on contracts of Mayor.

7-626. Contracts for repairs not to exceed 5 years.

7-627. Assessment when roadway paved — Amount assessed; levied pro rata.

7-628. Same — Assessment for gutters and curbs.

7-629. Same — Certain roadway improvements excepted.

7-630. Same — Limitations on assessments; computation.

7-631. Same — Property exempt where prior assessment paid.

7-632. Same — Property exempt where prior roadway improvement made at owner's expense.

7-633. Same — Exemption for resurfacing by heater method.

7-634. Same — Property abutting 2 or more streets.

7-635. Same — Collection; interest; exception to requirement of advertising.

7-636. Same — Protest by property owner.

7-637. Same — Cancellation of prior assessments; reassessments; refunds.

7-638. Same — Severability.

7-639. Applicability to assessments levied prior to 1885.

7-640. Exemptions of abutting property from deposits and assessments.

§§ 7-601 to 7-603. Contracts for repair or construction of streets, avenues, alleys, or sewers — Advertisement; lowest responsible bidder accepted; consent of Mayor required; contracts copied into book; pavement material; contractors' bonds and payments.

Repealed. Feb. 21, 1986, D.C. Law 6-85, § 1103(b), 32 DCR 7396.

Cross references. — As to procurement generally, see Chapter 11A of Title 1.

As to bonds and construction procurement, see subchapter V of Chapter 11A of Title 1.

Legislative history of Law 6-85. — Law 6-85, the "District of Columbia Procurement Practices Act of 1985," was introduced in Council and assigned Bill No. 6-191, which was

referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 5, 1985 and November 19, 1985, respectively. Signed by the Mayor on December 3, 1985, it was assigned Act No. 6-110 and transmitted to both Houses of Congress for its review.

§ 7-604. Cost of construction and repairs; payments.

The cost of laying down said pavement, sewers, and other works, or of repairing the same, shall be paid for in the following proportions and manner, to wit: The United States shall pay one-half of the cost of all work done under the provisions of this section, except as hereinafter provided, which payment shall be credited as part of the 50 per centum which the United States contributes toward the expenses of the District of Columbia for that year; and all payments shall be made by the Secretary of the Treasury on the warrant or order of the Mayor of the District of Columbia, in such amounts and at such times they may deem safe and proper in view of the progress of the work: Provided, that the Capital Transit Company herein provided for shall bear the entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the street or bridge is not being paved, and shall bear one-half the cost of other paving, repaving, or maintenance of paving between its track and for 2 feet outside the outer rails, and shall bear the excess cost of construction and maintenance of public bridges due to the existence or installation of its tracks on such bridges: Provided further, that nothing herein contained shall relieve said Capital Transit Company from liability for street paving as owner of real estate apart from right-of-way occupied by its tracks as provided by § 7-613; and if such company shall fail or refuse to pay the sum due from them in respect of the work done by or under the orders of the proper officials of said District, the Mayor of the District of Columbia shall issue certificates of indebtedness against the property, real or personal, of such railway company, which certificates shall bear interest at the rate of 10 per centum per annum until paid, and which, until they are paid, shall remain and be a lien upon the property on or against which they are issued together with the franchise of said company; and if the said certificates are not paid within 1 year, the said Mayor of the District of Columbia may proceed to sell the property against which they are issued, or so much thereof as may be necessary to pay the amount due, such sale to be first duly advertised daily for 1 week in some newspaper published in the City of Washington, and to be at public auction to the highest bidder. When street railways cross any street or avenue, the pavement between the tracks of such railway shall conform to the pavement used upon such street or avenue, and the companies owning these intersecting railroads shall pay for such pavements in the same manner and proportion as required of other railway companies under the provisions of this section. (June 11, 1878, 20 Stat. 106, ch. 180, § 5; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3; 1973 Ed., § 7-604.)

Cross references. — As to cost of repair and maintenance of bridges, see §§ 7-502 to 7-508.

As to assessment of cost of paving streets against abutting property, see §§ 7-627 to 7-640.

As to maximum front foot assessment, see § 7-630.

Section references. — This section is re-

ferred to in §§ 7-502, 7-503, 7-505, 7-612, and 7-613.

References in text. — The Capital Transit Company, referred to twice near the middle of this section, has been succeeded by the D.C. Transit System, Inc.

Change in government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Congressional intent. — Congress, in authorizing the formulation of the Capital Transit Company in the District of Columbia, intended

to impose only an ultimate financial cost upon the company, as distinguished from a legal duty of street maintenance. *Fisher v. Capital Transit Co.*, 246 F.2d 666 (D.C. Cir. 1957).

Capital Transit Company owed no duty to pedestrians to inspect, maintain, and repair tracks and, therefore, was not liable for the resulting loss of consortium to the pedestrian's wife or the personal injuries sustained by a pedestrian who, while crossing the street, fell when his foot got caught in a hole located in or near streetcar tracks. *Fisher v. Capital Transit Co.*, 246 F.2d 666 (D.C. Cir. 1957).

Duty to remove abandoned trolley tracks. — The District of Columbia had the responsibility of removing abandoned trolley tracks which constituted a continuing hazard for bicycle, motorcycle and automobile traffic within District of Columbia; the Transit Company only had the responsibility to pay the cost of removal when incurred. *Joseph v. District of Columbia*, 366 F. Supp. 757 (D.D.C. 1973), *aff'd*, 495 F.2d 1075 (D.C. Cir. 1974).

§ 7-605. Removal of street railway tracks.

On and after July 1, 1941, when any Capital Transit Company street railway operation shall have been ordered abandoned by the Public Service Commission of the District of Columbia and the Council of the District of Columbia shall have ordered the removal of abandoned tracks, the Capital Transit Company shall pay the entire cost of removing such abandoned tracks and reggrading the track area, and, if the street or bridge in which the said tracks have been ordered abandoned is not being paved, the Capital Transit Company shall pay the entire cost of paving the abandoned track areas, which cost, however, shall not exceed the cost of repaving such abandoned track areas with the type, character, and thickness of the paving of the adjacent roadway left in place, and, if the roadway of the street or bridge is being paved at the time of removal of said abandoned tracks, the Capital Transit Company shall pay one-half of the actual cost of paving the abandoned track areas, irrespective of whether the paving is of the type, character, and thickness as that existing at the time of said removal. The Council of the District of Columbia is authorized to settle in conformity with the principles herein set forth, any claims it now has, or in the future may have, for the paving of abandoned track areas, upon such terms and conditions as to time of payment or payments as the Council may determine. (July 1, 1941, 55 Stat. 533, ch. 271; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; 1973 Ed., § 7-604a.)

References in text. — The Capital Transit Company, referred to throughout this section, has been succeeded by the D.C. Transit System, Inc.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(170) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

Duty to remove abandoned trolley tracks. — The District of Columbia had the responsibility of removing abandoned trolley tracks which constituted a continuing hazard for bicycle, motorcycle and automobile traffic within District of Columbia; the Transit Company only had the responsibility to pay the cost of removal when incurred. *Joseph v. District of Columbia*, 366 F. Supp. 757 (D.D.C. 1973), *aff'd*, 495 F.2d 1075 (D.C. Cir. 1974).

§ 7-606. Water and gas mains, service pipes, and sewer connections.

It shall be the duty of the Mayor of the District of Columbia to see that all water and gas mains, service pipes, and sewer connections are laid upon any street or avenue proposed to be paved or otherwise improved before any such pavement or other permanent works are put down; and the Washington Gas Light Company, under the direction of said Mayor, shall at its own expense take up, lay, and replace all gas mains on any street or avenue to be paved, at such time and place as said Mayor shall direct, except as provided in §§ 5-804(c), 5-806(h), and 7-135. (June 11, 1878, 20 Stat. 107, ch. 180, § 5; Oct. 14, 1972, 86 Stat. 813, Pub. L. 92-495, § 5; 1973 Ed., § 7-605.)

Cross references. — As to fees for permits to excavate public streets or alleys to make water, gas, or sewer connections, see § 1-1024.

As to requirements for new or replacement

water or sewer systems to reduce flood hazards, see § 5-303.

As to laying water mains and sewers, see § 43-1501 et seq.

§ 7-607. Assessments for sidewalks and curbing.

When new sidewalks or curbing are required to be laid on streets being improved, one-half the total cost shall be assessed against abutting property, in like manner and under the law governing in the case of assessment and permit work: Provided, that abutting property shall not be liable to such assessment when sidewalk and curbing have been laid by the District authorities in front of the same under the assessment and permit system within 2 years prior to such assessment. (Aug. 7, 1894, 28 Stat. 250, ch. 232; 1973 Ed., § 7-606.)

Section references. — This section is referred to in §§ 7-616 and 7-637.

§ 7-608. Mayor to submit schedules of streets to be improved.

The Mayor of the District of Columbia, in submitting the schedules of streets and avenues to be improved, shall each year arrange said streets and avenues in the order of their importance, as determined by him after personal examination of said streets and avenues. (Mar. 3, 1903, 32 Stat. 962, ch. 992; 1973 Ed., § 7-607.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-609. Improvement and repairs of alleys and sidewalks; construction of sewers and sidewalks.

(a) The Mayor of the District of Columbia is authorized and empowered, whenever in his judgment the public health, safety, or comfort require it, or whenever application shall be made therefor, accompanied by a deposit equal to one-half the estimated cost of the work, to improve and repair alleys and sidewalks, and to construct sewers and sidewalks in the District of Columbia of such form and materials as he may determine, and to pay the total cost of such work from appropriations for assessment and permit work.

(b) Said Mayor shall give notice by advertisement, twice a week for 2 weeks in some newspaper published in the City of Washington, of any assessment work proposed to be done by him under this section, designating the location and the kind of work to be done, specifying the kind of materials to be used, the estimated cost of the improvement, and fixing a time and place when and where property owners to be assessed can appear and present objections thereto, and for hearing thereof. One-half of the total cost of the assessment work herein provided for, including the expenses of the assessment, shall be charged against and become a lien upon abutting property, and an assessment therefor shall be levied pro rata according to the linear frontage of said property: Provided, that no such assessment shall be levied against abutting property for the cost of repairing alleys or sidewalks when the damage requiring such repair is caused by the growth of roots of trees on public space or the cause of such damage is otherwise beyond the control of the owner of such property. One-half of the cost of the assessment work done under the provisions of this section shall be paid to the Director of the Department of Finance and Revenue of the District of Columbia, as follows: One-third of the amount within 60 days after service of notice of such assessment, without interest; one-third within 1 year, and the remainder within 2 years from the date of such service of notice, and interest shall be charged at the rate of 6 per centum per annum from the date of service of such notice on all amounts which shall remain unpaid at the expiration of 60 days after service of notice of such assessment, which in all cases shall be served upon each lot owner, if he or she be a resident of the District, and his or her residence known, and if he or she be a nonresident of the District, or his or her residence unknown, such notice shall be served on his or her tenant or agent, as the case may be, and if there be no tenant or agent known to the Mayor, then he shall give notice of such

assessment by advertisement twice a week for 2 weeks in some newspaper published in said District. The service of such notice, where the owner or his tenant or agent resides in the District of Columbia, shall be either personal or by leaving the same with some person of suitable age at the residence or place of business of such owner, agent, or tenant; and return of such service, stating the manner thereof, shall be made in writing and filed in the office of said Mayor: Provided, that the cost of publication of the notice herein provided for, and the service of such notices shall be paid out of the appropriations for assessment and permit work. Any property upon which such assessment and accrued interest thereon, or any part thereof, shall remain unpaid at the expiration of 2 years from the date of service of notice of such assessment shall be subject to sale therefor under the same conditions and penalties which are imposed by existing laws for the nonpayment of general taxes; and if any property assessed as herein provided for shall become liable to sale for any other assessment or tax whatever, then the assessments levied under this section shall become immediately due and payable, and the property against which they are levied may be sold therefor, together with the accrued interest thereon, and the cost of advertising, to the date of such sale. Property owners who request improvements under the permit system shall deposit in advance with the Director of the Department of Finance and Revenue of the District of Columbia an amount equal to one-half the estimated cost of such improvements, and in such cases it shall not be necessary to give the notice hereinbefore provided for. All moneys received by the Director of the Department of Finance and Revenue of the District of Columbia for work done upon the request of property owners, as herein provided for, shall be deposited by him in the United States Treasury to the credit of the Permit Fund. Upon the completion of work done as aforesaid at the request of property owners, the Mayor shall repay to the then current appropriation for assessment and permit work, out of the Permit Fund, a sum equivalent to one-half of the cost of the work, and shall return to the depositors, from the same fund, as application may be made therefor, any surplus that may remain over and above one-half of the cost of the work. All sums received by the Director under the provisions of this section on account of assessment work, and in payment of assessments heretofore made prior to August 7, 1894, for compulsory permit work, shall be credited to the appropriation for assessment and permit work for the fiscal years in which they are collected: Provided further, that the costs of service connections with water mains and sewers shall be assessed against the lots for which said connections are made, and shall be collected in the same manner and upon the same conditions as to notice as herein provided for assessment work. (Aug. 7, 1894, 28 Stat. 247, ch. 232; Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 9; Sept. 25, 1962, 76 Stat. 598, Pub. L. 87-700, § 1; 1973 Ed., § 7-608.)

Cross references. — As to requirements for new or replacement sewer systems to reduce flood hazards, see § 5-303.

As to assessments against abutting property, see §§ 7-627 to 7-640.

As to exemption from assessment for repairs

when original construction was done under permit system, see § 7-632.

As to laying water mains and sewers, see § 43-1501 et seq.

As to special assessments, see §§ 47-1201 to 47-1207.

Section references. — This section is referred to in §§ 7-635 and 7-636.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies are transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was super-

seded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States, and Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

"Special use" of sidewalk created liability. — There is a "special use" of a sidewalk by an abutter, such that the abutter is liable for injuries resulting from unsafe or dangerous conditions created by the use, where the abutter uses the sidewalk as a driveway entrance to his gasoline station and, as a result, causes an unsafe or dangerous condition. *District of Columbia v. Texaco, Inc.*, App. D.C., 324 A.2d 690 (1974).

Cited in *Burner v. Washington*, 399 F. Supp. 44 (D.D.C. 1975).

§ 7-610. Repayments from Permit Fund.

Repayments from the Permit Fund to the appropriation for assessment and permit work shall be credited to the appropriation for the fiscal year in which the repayment is made. (Mar. 2, 1907, 34 Stat. 1127, ch. 2510; 1973 Ed., § 7-609.)

§ 7-611. Service connections with water mains and sewer.

The Mayor of the District of Columbia is hereby authorized whenever the roadway of a street is about to be paved or macadamized to make service connections in such street for all abutting lots and premises with the water mains and sewer provided for the service of said lots and premises. The entire cost of the said connections shall be paid from the current appropriations respectively for the extension of the sewer and water-supply systems and shall

be assessed against the abutting property and collected in like manner as assessments which are levied under the compulsory permit system; the sums so collected shall be credited to the respective appropriations for the extension of the sewer and water-supply systems for the fiscal year during which said collections are made. (Mar. 14, 1894, 28 Stat. 44, ch. 40; 1973 Ed., § 7-610.)

Cross references. — As to repair or renewal by District and compensation for past repairs of water service pipes and building sewers, see § 6-405.

As to laying water mains and sewers, see § 43-1501 et seq.

As to special assessments, see §§ 47-1201 to 47-1207.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-612. Paving or resurfacing roadway of streets, avenues, and roads.

(a) Whenever under appropriations made by Congress, the roadway of any street, avenue, or road in the District of Columbia is improved by laying a new pavement thereon or completely resurfacing the same not less than 1 square in extent, from curb to curb, or from gutter to gutter where no curb exists, where the material used is sheet asphalt, asphalt block, asphaltic or bituminous macadam, concrete, or other fixed roadway pavement, such proportion of the total cost of the work, including all expenses of the assessment, to be made as prescribed by § 7-613, shall be charged against and become a lien upon the abutting property, and assessments therefor shall be levied pro rata according to the linear frontage of said property on the street, avenue, or road, or portion thereof upon the roadway of which said new pavement or resurfacing is laid: Provided, that there shall be excepted from such assessment the cost of paving the roadway space included within the intersection of streets, avenues, and roads, as said intersections are included within the building lines projected, and also the cost of paving the space within such roadways for which street railway companies are responsible under their charters or under law on streets, avenues, or roads where such railways have been or shall be constructed.

(b) All of the expenses of maintenance and repairs shall be paid from the revenues of the District of Columbia and in addition, such sums as may be appropriated out of any money in the Treasury of the United States not otherwise appropriated. Nothing contained in this section shall be construed as relieving street railway companies from bearing one-half the expense of paving streets or avenues between the exterior rails of the tracks of their roads in the District of Columbia and for a distance of 2 feet from and exterior to such tracks on each side thereof and of keeping the same in repair, as required by

§ 7-604. (July 21, 1914, 38 Stat. 524, ch. 191; July 29, 1914, 38 Stat. 565, ch. 215; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3; 1973 Ed., § 7-611.)

Cross references. — As to assessment of cost of paving against abutting property, see §§ 7-627 to 7-640.

As to special assessments, see §§ 47-1201 to 47-1207.

Section references. — This section is referred to in §§ 7-616 and 7-637.

Determining validity of assessment under front-foot rule. — The size, shape, improvements, or favorable location of the property is not the test to be applied in determining the validity of an assessment under the front-foot rule. The test is the relation of the property

to other properties facing on the avenue, and in the immediate vicinity. *Taliaferro v. Railway Term. Whse.*, 43 F.2d 271 (D.C. Cir. 1930).

Cited in *Rudolph v. Knox*, 280 F. 1007 (D.C. Cir. 1922); *Johnson v. Rudolph*, 16 F.2d 525 (D.C. Cir. 1926); *Dougherty v. American Sec. & Trust Co.*, 40 F.2d 813 (D.C. Cir.), cert. denied, 282 U.S. 854, 51 S. Ct. 31, 75 L. Ed. 757 (1930); *Crosby v. Dodge*, 46 F.2d 727 (D.C. Cir. 1931); *Crosby v. Moebs*, 57 F.2d 408 (D.C. Cir. 1932); *Reichelderfer v. Hechinger*, 57 F.2d 943 (D.C. Cir. 1932); *Gotwals v. Miller*, 59 F.2d 1051 (D.C. Cir. 1932).

§ 7-613. Assessments for costs of paving streets.

(a) The half cost of the paving or repaving of a roadway between the side thereof and the center thereof with sheet asphalt, asphalt block, granite block, vitrified block, cement concrete, bituminous concrete, macadam, or other form of pavement shall be assessed against the property abutting the side of the street so improved, such assessments to be levied and collected as provided on September 1, 1916, as to alleys and sidewalks: Provided, that the advertisement by publication of the intention of the Mayor of the District of Columbia to do such work and the formal hearing in respect thereto required by law as to alley and sidewalk improvements shall not be required as to roadway improvements.

(b) There shall be included in the area the cost of which is assessable hereunder only the roadway area abutting the property between lines normally projected from the building line of the street being improved at the points of intersection with the building lines of intersecting streets.

(c) There shall be excluded from the cost of the roadway work to be assessed hereunder:

(1) The cost of all such work beyond a line 20 feet from the side thereof;

(2) The cost of all such work within the space within which street railway companies are required to pave by law, and nothing herein contained shall be construed as relieving street railway companies from bearing one-half the cost of paving and repairing streets and avenues between lines 2 feet exterior to the outer rails of their tracks, as required by § 7-604;

(3) That no frontage of abutting property, on which a legal assessment for paving or repaving has been levied and paid hereunder, shall be liable to any further assessment hereunder on account of the replacement of such pavement. (Sept. 1, 1916, 39 Stat. 716, ch. 433, § 8; Feb. 9, 1927, 44 Stat. 1064, ch. 87; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3; 1973 Ed., § 7-612.)

Cross references. — As to special assessments, see § 47-1201 et seq.

Section references. — This section is referred to in §§ 7-604, 7-612, 7-616, and 7-637.

Change in government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Reichelderfer v. Hechinger*, 57 F.2d 943 (D.C. Cir. 1932).

§ 7-614. Special assessments for curbs and gutters levied.

When any curb or gutter is laid, or any curb and gutter are laid, on any street, avenue, or road in the District of Columbia which said curb shall be constructed of concrete, stone, or other permanent type of construction, or which said gutter shall be constructed of concrete, brick, granite block, asphalt on a concrete base, or other permanent type of construction, one-half of the total cost thereof shall be charged against and become a lien upon the property abutting the side of the street, avenue, or road, or portion thereof, so improved, and assessments therefor shall be levied pro rata according to the linear frontage of said property on the side of the street, avenue, or road, or portion thereof, so improved: Provided, however, that no assessments shall be levied hereunder on account of the replacement of any curb or gutter or curb and gutter of a permanent type of construction. When any gutter shall be constructed, in whole or in part, as an integral portion of a permanent type of roadway of any street, avenue, or road, so much of said roadway as lies within 2 feet of the curb line shall be considered as a gutter for the purposes of §§ 7-614 to 7-617. (May 25, 1943, 57 Stat. 83, ch. 98, § 1; 1973 Ed., § 7-612a.)

Section references. — This section is referred to in § 7-617.

§ 7-615. Same — Computation.

The total assessment levied hereunder against any abutting property shall not exceed the number of square feet of area of said property multiplied by 1 per centum of the linear front-foot assessment and shall not exceed 10 per centum of the value of the said abutting property, exclusive of improvements thereon, as assessed for the purpose of taxation at the time of the laying of the curb or gutter or curb and gutter for which said assessment is levied. In computing assessments hereunder against unsubdivided land according to the assessed valuation, there shall be excluded from the computation land lying back more than 100 feet from the street, avenue, or road being improved where the depth is even, and where the depth is uneven the average depth shall be taken in computation but not to exceed more than 100 feet. (May 25, 1943, 57 Stat. 83, ch. 98, § 2; 1973 Ed., § 7-612b.)

Section references. — This section is referred to in §§ 7-614 and 7-617.

§ 7-616. Same — Property abutting 2 or more streets, avenues, or roads.

When any property abuts 2 or more streets, avenues, or roads, the assessments against said property levied hereunder shall not exceed in the aggregate, together with any legal assessments heretofore levied and paid for paving, curbing, and guttering of or on said streets, avenues, or roads, under the authority of §§ 7-612, 7-613, relating to assessments for the paving of streets, avenues, and roads, or under § 7-607, relating to assessments for laying curbs, or under §§ 7-627 to 7-630, 3½ cents per square foot of area of said property, or 20 per centum of the value of said property, exclusive of improvements thereon, as assessed for the purpose of taxation at the time of the laying of the curb or gutter or curb and gutter for which said assessment is levied. (May 25, 1943, 57 Stat. 83, ch. 98, § 3; 1973 Ed., § 7-612c.)

Section references. — This section is referred to in §§ 7-614 and 7-617.

§ 7-617. Same — Roadway improvements and curbs and gutters completed after May 25, 1943.

No assessments shall be levied under §§ 7-627 to 7-630, for any roadway improvement completed subsequent to May 25, 1943, but for curbs or gutters, or curbs and gutters, completed subsequent to May 25, 1943, assessments shall be levied against the abutting property in accordance with the provisions of §§ 7-614 to 7-617. (May 25, 1943, 57 Stat. 83, ch. 98, § 4; 1973 Ed., § 7-612d.)

Section references. — This section is referred to in § 7-614.

§ 7-618. Width of pavement of streets.

No street or avenue in the District of Columbia shall be paved less in width than the width provided by law except by express authority of Congress upon estimates to be submitted to Congress by the Mayor of the District of Columbia. (Mar. 2, 1907, 34 Stat. 1127, ch. 2510; 1973 Ed., § 7-613.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-619. Minor changes in roadway width.

The Mayor of the District of Columbia is authorized to change any roadway width by an amount not in excess of 1 foot whenever hereafter he considers the same necessary and advisable in connection with the resurfacing or other improvement of the street. (May 18, 1910, 36 Stat. 387, ch. 248, § 1; 1973 Ed., § 7-613a.)

Cross references. — As to width of highways in permanent highway plan, see § 7-107.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-620. Cutting trenches in highways — Permit required; exceptions.

It shall be unlawful for any person to make any cut or trench in any highway, reservation, or public space in the District of Columbia, or to disturb or remove any public work or material therein, without a permit so to do from the Mayor of the District of Columbia. The person obtaining such a permit shall abide by all conditions and provisions of the permit: Provided, that nothing in this section shall be construed to apply to public buildings of the United States, or to diminish the authority of the officer in charge of public buildings and grounds, or the Architect of the Capitol. (June 18, 1898, 30 Stat. 477, ch. 467, § 7; 1973 Ed., § 7-615; Sept. 13, 1978, D.C. Law 2-105, § 2, 25 DCR 1982.)

Section references. — This section is referred to in §§ 7-621 and 43-1705.

Legislative history of Law 2-105. — Law 2-105, the “Underground Excavation Enforcement Act of 1978,” was introduced in Council and assigned Bill No. 2-246, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on May 30, 1978 and June 13, 1978, respectively. Signed by the Mayor on July 5, 1978, it was assigned Act No. 2-217 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-621. Same — Penalty; prosecution.

Any person violating any of the provisions of § 7-620 shall on conviction thereof in the Superior Court of the District of Columbia be punished by a fine of not less than \$100 nor more than \$1,000; and in default of payment of such fine such person shall be confined in the workhouse of the District of Columbia for a period not exceeding 6 months; and all prosecutions shall be in the Superior Court of the District of Columbia, in the name of the District of Columbia. (June 18, 1898, 30 Stat. 477, ch. 467, § 8; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 7-616; Sept. 13, 1978, D.C. Law 2-105, § 3, 25 DCR 1982.)

Legislative history of Law 2-105. — See note to § 7-620.

§ 7-622. Use of bituminous macadam authorized.

The use of bituminous macadam is authorized on streets, avenues, and roads to be improved or paved. (June 26, 1912, 37 Stat. 150, ch. 182; 1973 Ed., § 7-617.)

§ 7-623. Use of portable asphalt plant.

The portable asphalt plant purchased under the appropriation for repairs of streets, avenues, and alleys for the fiscal year 1913, may be operated under the immediate direction of the Mayor of the District of Columbia in doing such work of resurfacing and repairs to asphalt pavements, in the repair of macadam streets by constructing on such macadam streets and asphalt macadam wearing surface and in the construction of asphaltic macadam surfaces on concrete base, as in his judgment may be economically performed by the use of said plant: Provided, that at no time shall more work of resurfacing and repairs be done with the portable asphalt plant than can be accomplished with the single portable plant owned on March 4, 1913, by the District of Columbia. (Mar. 4, 1913, 37 Stat. 948, ch. 150; 1973 Ed., § 7-618.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-624. Unexpended allotments for street paving made available for succeeding year.

When as many streets and entire blocks of streets in any section have been paved as the amount allotted to that section will permit, and there still remains a balance insufficient to pave an entire block of the street provided for pavement upon the schedule, such balance shall remain available and be added to the allotment for that section for the next succeeding year. (June 6, 1900, 31 Stat. 559, ch. 789; 1973 Ed., § 7-619.)

§ 7-625. Limitation on contracts of Mayor.

The Mayor of the District of Columbia is prohibited from incurring or contracting liabilities on behalf of the United States in the improvement of streets, avenues, and reservations beyond the amount of appropriations previously made by Congress, and from entering into any contract touching such improvements on behalf of the United States, except in pursuance of appropriations made by Congress. (R.S., § 1813; June 20, 1874, 18 Stat. 116, ch. 337; 1973 Ed., § 7-620.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-626. Contracts for repairs not to exceed 5 years.

Contracts for repairs to pavements may be made for periods not exceeding 5 years, and subject to annual appropriation therefor by Congress. (July 18, 1888, 25 Stat. 319, ch. 676; 1973 Ed., § 7-621.)

§ 7-627. Assessment when roadway paved — Amount assessed; levied pro rata.

Whenever under the appropriations made by Congress, the roadway of any street, avenue, or road in the District of Columbia is paved or repaved with sheet asphalt, asphalt block, asphaltic or bituminous concrete (except penetration macadam), cement concrete, granite block, vitrified brick, or other form of permanent pavement, one-half of the total cost thereof shall be charged against and become a lien upon the abutting property, and assessments therefor shall be levied pro rata according to the linear frontage of said property on the street, avenue, or road, or portion thereof, upon the roadway of which said new pavement or repaving is laid: Provided, however, that when such new pavement or repaving is laid solely on 1 side of the centerline of such

roadway, the one-half cost thereof shall be assessed, as herein provided, against the property abutting the side of the street, avenue, or road, or portion thereof, so improved. (Feb. 20, 1931, 46 Stat. 1197, ch. 246, § 1; 1973 Ed., § 7-622.)

Cross references. — As to roadway improvements completed after May 25, 1943, see § 7-617.

As to cost of pavement or repair of streets used by railroad, see § 7-1422.

As to special assessments, see §§ 47-1201 to 47-1207.

Section references. — This section is referred to in §§ 7-616, 7-617, 7-628, 7-631 to 7-638, and 47-1202.

§ 7-628. Same — Assessment for gutters and curbs.

For the purposes of computing the assessments under §§ 7-627 to 7-638, the term “roadway” shall be construed to include the gutters and curbs: Provided, however, that where any permanent and new construction of curb, or curb and gutter, is laid, and the roadway of the street is not paved or repaved, or is not paved or repaved with a pavement of the character specified in § 7-627, the half cost of such curb, or curb and gutter, shall be assessed against the abutting property in the manner provided in §§ 7-627 to 7-638. (Feb. 20, 1931, 46 Stat. 1197, ch. 246, § 2; 1973 Ed., § 7-623.)

Cross references. — As to roadway improvements completed after May 25, 1943, see § 7-617.

Section references. — This section is referred to in §§ 7-616, 7-617, 7-631 to 7-638, and 47-1202.

§ 7-629. Same — Certain roadway improvements excepted.

There shall be excepted from such assessments the cost of paving the roadway in excess of 40 feet in width where the new pavement or repaving is laid on both sides of the centerline of such roadway; the cost of paving the roadway in excess of 20 feet in width where the new pavement or repaving is laid solely on 1 side of the centerline of such roadway; the cost of paving the roadway space included within the intersection of streets, avenues, and roads, as said intersections are limited by lines normally projected from the building lines of the street, avenue, or road being improved at its point of intersection with the building lines of the intersecting streets, avenues, or roads and also the cost of paving or repaving the space within such roadways for which street railway companies are responsible under their charters or under law, on streets, avenues, or roads where such railways have been or shall be constructed. (Feb. 20, 1931, 46 Stat. 1197, ch. 246, § 3; 1973 Ed., § 7-624.)

Cross references. — As to roadway improvements completed after May 25, 1943, see § 7-617.

Section references. — This section is referred to in §§ 7-616, 7-617, 7-628, 7-631 to 7-638, and 47-1202.

§ 7-630. Same — Limitations on assessments; computation.

The maximum linear front foot assessment levied hereunder shall not exceed \$3.50 per linear front foot. The total assessment levied hereunder against any abutting property shall not exceed the number of square feet of area of said property multiplied by 1 per centum of the linear front-foot assessment, and shall not exceed 20 per centum of the value of the said abutting property, exclusive of improvements thereon, as assessed for the purpose of taxation at the time of the paving or repairing of the street, avenue, or road for which said assessment is levied. In computing assessments hereunder against unsubdivided land by the square foot or according to the assessed valuation, there shall be excluded from the computation land lying back more than 100 feet from the street, avenue, or road being improved where the depth is even; where the depth is uneven, the average depth shall be taken in computation, but not to exceed 100 feet. (Feb. 20, 1931, 46 Stat. 1197, ch. 246 § 4; 1973 Ed., § 7-625.)

Cross references. — As to roadway improvements completed after May 25, 1943, see § 7-617.

Section references. — This section is referred to in §§ 7-616, 7-617, 7-628, 7-631 to 7-638, and 47-1202.

§ 7-631. Same — Property exempt where prior assessment paid.

No property on which a legal assessment has been levied and paid for paving or repaving, curbing or curbing and guttering, on the roadway of any street, avenue, or road, shall be liable for any further assessment under §§ 7-627 to 7-638 on account of the replacement of such pavement, curbing, or curbing and guttering. (Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 5; 1973 Ed., § 7-626.)

Section references. — This section is referred to in §§ 7-628, 7-632 to 7-638, 7-639, and 47-1202.

§ 7-632. Same — Property exempt where prior roadway improvement made at owner's expense.

No assessments shall be levied for repaving where the original pavement was laid at the whole cost of the owner or owners of the abutting property if the said original pavement was constructed under a permit issued by the District of Columbia and under the supervision and direction of an authorized engineer and inspector of the Department of Transportation of said District, in strict accordance with the then current specifications and design for pavements of the type for which permit was issued: Provided, that where curb, or curb and gutter, or a part of the roadway has or have been paved under proper permit, subject to engineering and inspection as above stated, the assessment for paving other parts of the roadway, placing curb, or curb and gutter, when the same is done at public expense, shall be made against property abutting on the highway as provided in §§ 7-627 to 7-638, credit being given in such assess-

ment for the half cost of the pavement laid by the owner under permit as above, estimated on the basis of the contract rates for such work at the date of the performance of the assessable work, so that the total cost to the owner for such improvements shall not exceed the amount of assessments which would have been made under §§ 7-627 to 7-638, had the improvements been all made at public expense. (Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 6; 1973 Ed., § 7-627.)

Section references. — This section is referred to in §§ 7-628, 7-631, 7-633 to 7-638, 7-639, and 47-1202.

Transfer of functions. — Reorganization Order No. 53 of the Board of Commissioners, dated June 30, 1953, established under the direction and control of the Engineer Commissioner, a Department of Highways, headed by a Director. The Department of Highways was established to perform highway services and operations for the District including the planning, design, engineering, operation, maintenance and repair of highway and bridge facilities. The Order sets out the purposes and organization of the new Department. The Order abolished the previously existing Department of Highways, the Street Division, the Bridge Division, the Electrical Division, the

Trees and Parking Division and the Central Garage and Shops, and transferred all of their functions and positions to the new Department of Highways. Reorganization Order No. 53, as redesignated Organization Order No. 122, dated January 8, 1959, and amended to establish a new Department of Highways and Traffic, headed by a Director. The Order set forth the purpose, organization, and functions of the new Department. The Department of Highways and Traffic was replaced by the Department of Transportation by Reorganization Plan No. 2 of 1975, dated July 24, 1975.

The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 7-633. Same — Exemption for resurfacing by heater method.

No assessment shall be levied for the cost of resurfacing asphalt pavements by the heater method — stripping the surface from a rigid type base, and replacing surface thereon — or covering an existing hard surface or macadam pavement or base with bituminous material: Provided, that where an entire pavement is removed and replaced with a pavement of the character specified in § 7-627, the cost of the latter pavement shall be assessed as provided in §§ 7-627 to 7-638, if no previous legal assessment has been levied and paid therefor. (Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 7; 1973 Ed., § 7-628.)

Section references. — This section is referred to in §§ 7-628, 7-631, 7-632, 7-634 to 7-638, 7-639, and 47-1202.

§ 7-634. Same — Property abutting 2 or more streets.

When any property abuts 2 or more streets, avenues, or roads, the assessments against said property levied under §§ 7-627 to 7-638 shall not exceed in the aggregate, together with any legal assessments levied and paid prior to February 20, 1931, for the paving, curbing, or curbing and guttering of or on said streets, avenues, or roads, 3½ cents per square foot of area of said property, or 20 per centum of the value of said property, exclusive of improvements thereon, as assessed for purposes of taxation at the time of the paving or repaving, curbing, or curbing and guttering for which the assessment is levied. (Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 8; 1973 Ed., § 7-629.)

Section references. — This section is referred to in §§ 7-628, 7-631 to 7-633, 7-635 to 7-638, 7-639, and 47-1202.

§ 7-635. Same — Collection; interest; exception to requirement of advertising.

The assessments provided for in §§ 7-627 to 7-638 shall be made and collected as provided in § 7-609, relating to alleys and sidewalks. The rate of interest to be charged upon any assessment, levied under § 7-609 relating to alleys and sidewalks, or any instalment thereof, is reduced hereby from 8 per centum per annum to 6 per centum per annum: Provided, however, that any instalment of any such assessment not paid within the time provided in § 7-609 shall thereafter bear interest at the rate of 12 per centum per annum: And provided further, that the advertisement by publication of the intention of the Mayor of the District of Columbia to perform the work and the formal hearing in respect thereto required by law as to alley and sidewalk improvements shall not be required as to roadway, curbing, and gutter improvements. (Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 9; 1973 Ed., § 7-630.)

Section references. — This section is referred to in §§ 7-628, 7-631 to 7-634, 7-636 to 7-638, and 47-1202.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-636. Same — Protest by property owner.

Any property owner, aggrieved by any assessment levied under §§ 7-627 to 7-638, may, within 60 days after service of notice of such assessment, file with the Mayor of the District of Columbia a protest in writing against such assessment, accompanied by affidavits if he so desires, and if said Mayor finds that the property of such owner so protesting is not benefited by the improvement for which said assessment is levied, or is benefited less than the amount of such assessment, or is unequally or inequitably assessed with relation to other property abutting such improvement, said Mayor shall abate, reduce, or adjust such assessment in accordance with such finding. In computing the 60 days provided in § 7-609, within which such assessment may be paid without interest, there shall be excluded therefrom the time between the date of the filing of any such protest and the date of action thereon by the Mayor. (Feb. 20, 1931, 46 Stat. 1199, ch. 246, § 10; 1973 Ed., § 7-631.)

Section references. — This section is referred to in §§ 7-628, 7-631 to 7-635, 7-637, 7-638, and 47-1202.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-637. Same — Cancellation of prior assessments; reassessments; refunds.

The Mayor of the District of Columbia is directed to cancel all assessments for improvements completed within 3 years prior to February 20, 1931, levied under the authority of §§ 7-612 and 7-613, relating to assessments for the paving of streets, avenues, and roads, or under § 7-607, relating to assessments for laying curbs; and the Mayor is further directed to reassess the cost of such improvements against the abutting property in accordance with the provisions of §§ 7-627 to 7-638, which assessments shall become a lien upon the abutting property and be collected in the manner provided under §§ 7-627 to 7-638. Where assessments for such improvements have been paid in whole or in part the Mayor shall refund, within the limits of appropriations by Congress therefor, to the persons paying the same, the excess, if any, of such payments over the amounts of the reassessments levied under §§ 7-627 to 7-638. (Feb. 20, 1931, 46 Stat. 1199, ch. 246, § 11; 1973 Ed., § 7-632.)

Cross references. — As to refund of taxes and assessments, see § 47-1317.

Section references. — This section is referred to in §§ 7-628, 7-631 to 7-636, 7-638, and 47-1202.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Validity of prior assessments. — Where Congress, in authorizing the improvement of a particular street, made a finding of benefit to an abutting property, the conclusiveness of the finding that benefits would be conferred on the abutting landowners was not affected by the fact that the “existing law” in 1929 regarding assessments was replaced by this section. *Philadelphia, B. & W.R.R. v. Hazen*, 116 F.2d 543 (D.C. Cir. 1941).

§ 7-638. Same — Severability.

Should any provision of §§ 7-627 to 7-638 be decided by the courts to be unconstitutional or invalid, the validity of §§ 7-627 to 7-638 as a whole or of

any part thereof other than the part decided to be unconstitutional shall not be affected. (Feb. 20, 1931, 46 Stat. 1199, ch. 246, § 12; 1973 Ed., § 7-633.)

Section references. — This section is referred to in §§ 7-628, 7-631 to 7-637, and 47-1202.

§ 7-639. Applicability to assessments levied prior to 1885.

(a) The provisions of §§ 7-631, 7-632, and 7-633 shall not preclude the levying of assessments hereunder if the improvement for which such prior assessment was levied, or, if the original paving, curbing, or curbing and guttering, laid at the whole cost of the owner, were completed prior to January 1, 1885.

(b) The provision of § 7-634, relating to legal assessments heretofore levied, shall not be applicable where said prior assessments were levied for any improvement completed prior to January 1, 1885. (Feb. 20, 1931, ch. 246, § 14; June 28, 1935, 49 Stat. 430, ch. 331, § 1; 1973 Ed., § 7-634.)

Section references. — This section is referred to in § 47-1202.

§ 7-640. Exemptions of abutting property from deposits and assessments.

(a) Notwithstanding any other provision of law, owners of property abutting streets, avenues, roads, or alleys to be improved, or to have curbs, gutters, sewers, or sidewalks constructed thereon, shall not be required to make any deposit, nor shall the abutting property be assessed any part of the cost, for the improvement of the streets, avenues, roads, or alleys, or the construction of curbs, gutters, sewers, or sidewalks if the following conditions exist:

- (1) The abutting property is Class 1 Property; and
- (2) The abutting Class 1 Property, as evidenced by the most current certificates of tax assessment, is less than 80% of the median assessed value of all Class 1 real property in the District as reported by the Mayor; or
- (3) The real property is exempt from the real property tax in the District pursuant to U 47-1002; or
- (4) The Mayor determines that circumstances exist that threaten the health and safety of the public and that improvement of the streets, avenues, roads, and alleys, or the construction of curbs, gutters, sewers, or sidewalks thereon, is necessary to protect the health and safety of the public.

(b) The Mayor has sole discretion in the determination of which streets, avenues, roads, and alleys are to be improved, or which streets, avenues, roads, and alleys are to have curbs, gutters, sewers, or sidewalks constructed thereon where the exemption in subsection (a) of this section would be granted to owners of abutting property. (Sept. 24, 1994, D.C. Law 10-186, § 2, 41 DCR 5225.)

Legislative history of Law 10-186. — Law 10-186, the “Roadway, Alley and Sidewalk Improvement Act of 1994,” was introduced in Council and assigned Bill No. 10-295, which

was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 26, 1994, it was assigned Act No. 10-312 and transmitted to both Houses of Congress for its review. D.C. Law 10-186 became effective on September 24, 1994.

Submission of 5-year plan for improvements. — Section 3 of D.C. Law 10-186 provided that within 6 months of September 24, 1994, the Mayor shall submit to the Council a 5-year plan for the improvement of all unimproved streets, avenues, roads, and alleys and the construction of curbs, gutters, sewers, and sidewalks thereon in the District.

CHAPTER 7. STREET LIGHTING.

Sec.	Sec.
7-701. Rates; maintenance.	7-707. Mayor to regulate hours of lighting of street lamps.
7-702. Electric lamps on overhead wires prohibited.	7-708. Washington Terminal Company to pay for certain street lighting.
7-703. Failure to provide required illumination; testing facilities.	7-709. Railroads to pay for certain street lighting.
7-704. Mayor not required to execute contracts for lighting.	7-710. Increase in number of street lamps authorized.
7-705. Failure to furnish, erect, maintain, move, or discontinue street lamps.	
7-706. Extension of gas mains for maintenance of street lamps.	

§ 7-701. Rates; maintenance.

(a) No more than the following rates shall be paid for lighting avenues, streets, roads, alleys, and public spaces:

- (1) For mantle gas lamps of 60 candlepower, \$18.40 per lamp per annum;
- (2) For mantle gas lamps of not less than 120 candlepower, \$27 per lamp per annum;
- (3) For street designation lamps, using flat-flame burners, consuming not more than two and one-half cubic feet of gas per hour, or 8 candlepower incandescent electric lamps, with posts and lanterns furnished by the District of Columbia, \$10 per lamp per annum;
- (4) For 40 candlepower, 50 watt, incandescent electric lamps on overhead wires, \$15 per lamp per annum;
- (5) For 40 candlepower, 50 watt, incandescent electric lamps on underground wires, \$19.50 per lamp per annum;
- (6) For 60 candlepower, 75 watt, incandescent electric lamps on overhead wires, \$17.50 per lamp per annum;
- (7) For 60 candlepower, 75 watt, incandescent electric lamps on underground wires, \$23 per lamp per annum;
- (8) For 80 candlepower, 100 watt, incandescent electric lamps on underground wires, \$26 per lamp per annum;
- (9) For 100 candlepower, 125 watt, incandescent electric lamps on underground wires, \$27.50 per lamp per annum;
- (10) For 150 candlepower, 187 watt, incandescent electric lamps on underground wires, \$36.50 per lamp per annum;
- (11) For 200 candlepower, 250 watt, incandescent electric lamps on underground wires, \$46.50 per lamp per annum;
- (12) For 4 glower Nernst lamps on underground wires, \$52.50 per lamp per annum;
- (13) For six and six-tenths ampere, 528 watt, direct-current, series-inclosed arc lamps, \$80 per lamp per annum;
- (14) For 5 ampere, 550 watt, direct-current, multiple-inclosed arc lamps, \$80 per lamp per annum;
- (15) For 4 ampere, 320 watt magnetite, or other arc lamps of equal illuminating value acceptable to the Mayor of the District of Columbia, on overhead wires, \$59 per lamp per annum;

(16) For 4 ampere, 320 watt magnetite, or other arc lamps of equal illuminating value acceptable to the Mayor of the District of Columbia, on underground wires, \$72.50 per lamp per annum;

(17) For six and six-tenths ampere, 500 watt magnetite, or other arc lamps of equal illuminating value acceptable to the Mayor of the District of Columbia, on overhead wires, \$84 per lamp per annum;

(18) For six and six-tenths ampere, 500 watt magnetite, or other arc lamps of equal illuminating value acceptable to the Mayor of the District of Columbia, on underground wires, \$97.50 per lamp per annum;

(19) For flame arc lamps, 500 watt, General Electric type, or other arc lamps of equal illuminating value acceptable to the Mayor of the District of Columbia, \$150 per lamp per annum.

(b)(1) For the rates named in subsection (a) of this section it shall be the duty of each gaslight company and each electric light company doing business in the District of Columbia to erect and maintain such street lamps as the Mayor of said District may direct; and each such company shall furnish, install, and maintain all posts, lamps, lanterns, burners, wires, cable, conduits, gas pipes, street designations, and fixtures necessary for the respective lamps maintained by each of them, including lighting and extinguishing lamps, and repairing, painting, and cleaning.

(2) The cost of each lamppost for incandescent electric lighting furnished by any lighting company under the above rates shall not exceed \$15, except as hereinafter provided, which cost shall include only the lamppost, the globe, the ornamental top, and the street-designation frame and signs. All other fixtures, parts, fittings, lamps, sockets, wires, cables, and appurtenances necessary for the lamps maintained by said lighting company on said posts, including the cost of erection, shall not be included in said cost.

(3) The cost of each lamppost for gaslighting furnished by any lighting company under the above rates shall not exceed \$15, except as hereinafter provided, which cost shall include only the lamppost and the street-designation frame and signs. All other fixtures, parts, fittings, burners, lamps, pipes, and appurtenances necessary for the lamps maintained by said lighting company on said posts, including the cost of erection, shall not be included in said cost.

(4) The cost of each lamppost for arc lighting furnished by any lighting company under the above rates shall not exceed \$50, except as hereinafter provided, which cost shall include only the lamppost, the street-designation frame and signs, and the arm or top from which the lamp is hung. All other fixtures, parts, fittings, lamps, cables, wires, and appurtenances necessary for the lamps maintained by said lighting company on said posts, including the cost of erection, shall not be included in said cost.

(5) Each lamppost and its equipment shall be of a design and quality acceptable to the Mayor of the District of Columbia.

(6) For each such lamppost furnished by a lighting company by direction of the District Mayor which shall cost in excess of \$15 for gas or electric incandescent lamps, or which shall cost in excess of \$50 for electric arc lamps, the company furnishing the same shall receive, in addition to the above rates, 11 per centum per annum on such additional or excess cost.

(c) The Mayor of the District of Columbia is authorized, in his discretion, to purchase or construct from street-lighting appropriations made in the Act of June 26, 1912 (37 Stat. 181), posts, lanterns, street designations, and all necessary fixtures or appurtenances for any of the systems of lighting above named: Provided, that whenever the said Mayor shall furnish a lamppost including only the globe, the ornamental top, and the street-designation frame and signs for the electric incandescent lamps, or including only the street-designation frame and signs for gas lamps, or including only the street-designation frame and signs and the arm or top for arc lamps, \$1.65 per lamp per annum for gas or electric incandescent lamps and \$4.40 per lamp per annum for electric arc lamps shall be deducted from the rates above fixed.

(d) The Mayor of the District of Columbia is further authorized, in his discretion, to adopt other forms of electric street lighting than those named, in which event payments under appropriations made in the Act of June 26, 1912 (37 Stat. 181), shall be made for the lighting service rendered at not to exceed \$.03 per kilowatt-hour for current consumed, and, in addition thereto, 11 per centum per annum of the cost to the lighting company of furnishing and installing lamps, posts, street designations, fixtures, and the cable from lamps to the nearest point of current supply, and a fair sum for the cost of maintenance.

(e) When ordered to do so by the said Mayor, lighting companies shall move and readjust any lamps maintained by them at the following rates:

- (1) For each electric arc lamp, \$10;
- (2) For each electric incandescent lamp, \$5;
- (3) For each gas lamp moved not more than 6 feet, \$2.50;
- (4) For each gas lamp moved more than 6 feet, \$4;
- (5) For each gas lamp raised or lowered to new grade, \$1.50.

(f) When ordered by the Mayor to do so, lighting companies in the District of Columbia shall discontinue any public lamps maintained by them without further payment therefor, and shall remove from the streets, at their own expense, all posts, lanterns, and fixtures connected therewith. (Mar. 2, 1911, 36 Stat. 1008, ch. 192, § 7; June 26, 1912, 37 Stat. 181, ch. 182, § 7; 1973 Ed., § 7-701.)

Cross references. — As to erection of lights beyond City limits, see § 1-328.

As to powers and duties as to streets, see § 7-102.

As to duty to maintain lights on bridges, see § 7-501.

Payment for street lighting and traffic signal costs. — Section 130(a) of Pub. L. 98-125 provided that payment for street lighting and traffic signal costs shall be made by the Mayor monthly for each calendar month during fiscal year 1984, except for any month covered by a program (1) which provides for such expenses to be borne by the ratepayers of the electric utility involved and (2) for which all final administrative and judicial determinations have been made. Section 130(b) of Pub. L. 98-125 provided that except for funds set apart

exclusively for, or administratively apportioned for, eliminating the cash portion of the General Fund accumulated deficit, appropriations under the District of Columbia Appropriation Act, 1984, shall be available to the Mayor for purposes of § 130(a).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-702. Electric lamps on overhead wires prohibited.

No public electric lamp shall be maintained by means of overhead wires within either the city limits of Washington or the existing fire limits of the District of Columbia as existing March 2, 1911. (Mar. 2, 1911, 36 Stat. 1011, ch. 192, § 8; 1973 Ed., § 7-702.)

§ 7-703. Failure to provide required illumination; testing facilities.

Proportionate deductions shall be made from the amounts due lighting companies for failure to furnish the illumination required by law for public lighting in the District of Columbia, and each company shall furnish, at its own expense, when and as required by the Mayor of the District of Columbia, all proper and necessary facilities, testing places, and apparatus at its plant, and such help at points on its mains or circuits as to enable the said Mayor to determine whether the required illumination is being furnished. For each and every lamp which shall be extinguished or not lighted during any portion of the scheduled time of lighting, a pro rata deduction, based upon the period of nonillumination and the price per lamp, shall be made from said amounts. (Mar. 2, 1911, 36 Stat. 1011, ch. 192, § 8; 1973 Ed., § 7-703.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-704. Mayor not required to execute contracts for lighting.

The Mayor of the District of Columbia shall not be required to execute contracts for gas and electric lighting. (Mar. 2, 1911, 36 Stat. 1011, ch. 192, § 8; 1973 Ed., § 7-704.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-705. Failure to furnish, erect, maintain, move, or discontinue street lamps.

Any gaslight company or any electric light company doing business in the District of Columbia, which shall fail or refuse to furnish, erect, maintain, move, or discontinue any street lamp in compliance with the foregoing provisions as the Mayor of the District of Columbia may direct, shall be subject to a penalty of \$25 for each and every day's failure or refusal so to do, to be recovered at law in the name of the District of Columbia in any court of competent jurisdiction. (Mar. 2, 1911, 36 Stat. 1011, ch. 192, § 8; 1973 Ed., § 7-705.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-706. Extension of gas mains for maintenance of street lamps.

Each gas company in the District of Columbia shall, at its sole and entire expense, make reasonable extensions of its gas mains whenever the said extensions shall be necessary for maintaining street lamps for the public safety and comfort, and the Council of the District of Columbia shall regulate the location and depth of the said gas mains in the streets, avenues, roads, alleys, and spaces of the District of Columbia. (Mar. 3, 1893, 27 Stat. 544, ch. 199; May 29, 1928, 45 Stat. 996, ch. 901, § 1; 1973 Ed., § 7-706.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(171) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-707. Mayor to regulate hours of lighting of street lamps.

The Mayor of the District of Columbia, subject to appropriations therefor, is hereby authorized and empowered to require that all public and other lamps under his control be lighted during such hours as in his judgment will most effectively promote the safety and convenience of the public. (Mar. 6, 1939, 53 Stat. 511, ch. 7; 1973 Ed., § 7-707.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-708. Washington Terminal Company to pay for certain street lighting.

The Washington Terminal Company, its successors, or transferees shall pay to the District for the lighting of the streets, avenues, alleys, and grounds over and under which its right-of-way may cross, as well as for the lighting of those streets, avenues, alleys, and grounds bordering on its right-of-way, under the direction and control of the Mayor of the District of Columbia and in case of default of payment of such bills, actions at law may be maintained by the District of Columbia against said terminal company or its successors, or transferees therefor: Provided, that not more than \$85 per annum shall be paid for any electric arc light burning from 15 minutes after sunset to 45 minutes before sunrise, and operated wholly by means of underground wire; and each arc light shall be of not less than 1000 actual candlepower: Provided further, that no more than \$18 per annum shall be paid for each gas lamp equipped with a self-regulating flat-flame burner so adjusted as to secure under all ordinary variations of pressure and density a consumption of 5 cubic feet of gas per hour, nor more than \$20.85 per annum for each gas lamp and \$22.80 per annum for each oil lamp equipped with an incandescent mantle burner of not less than 60 candlepower. (May 26, 1908, 35 Stat. 287, 288, ch. 198; 1973 Ed., § 7-708.)

Section references. — This section is referred to in § 7-709.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-709. Railroads to pay for certain street lighting.

All railroads other than street railroads shall pay to the District of Columbia for the lighting, under the direction and control of the Mayor of the District of Columbia, of the public roads, streets, avenues, and alleys, for their full width, through which their tracks may be laid, for the length of the street occupied by the said tracks, whether the said tracks be laid above, below, or at grade; as well as for the lighting of the subways and bridges over or under which the tracks of said railroads pass; and in default of payment of such bills, actions at law may be maintained by the District of Columbia against said railroads or their successors, transferees, or lessees therefor: Provided, that nothing herein shall be held to repeal § 7-708. (Mar. 4, 1913, 37 Stat. 953, ch. 150; 1973 Ed., § 7-709.)

Cross references. — As to duty to maintain lights on bridges, see § 7-501.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-710. Increase in number of street lamps authorized.

The proper authorities are directed to increase from time to time, as the public good may require, the number of street lamps on any of the streets, lanes, alleys, public ways, and grounds, in the City of Washington, and to do any and all things pertaining to the well lighting of the City. (R.S., D.C., § 233; 1973 Ed., § 7-710.)

CHAPTER 8. BARBED-WIRE FENCES.

Sec.	Sec.
7-801. Construction or maintenance within fire limits.	7-803. Notice to remove; service.
7-802. Construction or maintenance outside fire limits.	7-804. Penalties.
	7-805. Failure to remove.

§ 7-801. Construction or maintenance within fire limits.

No fence, barrier, or obstruction consisting or made, in whole or in part, of what is commonly called barbed wire shall be erected, constructed, or maintained along the line of or in or upon any street, avenue, alley, road, or other public walk, driveway, or public or private parking within the fire limits of the District of Columbia. (July 8, 1898, 30 Stat. 724, ch. 640, § 1; 1973 Ed., § 7-1101.)

Section references. — This section is referred to in § 7-803.

§ 7-802. Construction or maintenance outside fire limits.

No fence, barrier, or obstruction made, in whole or in part of what is commonly called barbed wire shall be erected, constructed, or maintained within the said District of Columbia, outside of the fire limits, along the line of or in or upon any street, avenue, alley, road, or other public walk, driveway, or public or private parking without a permit therefor from the Mayor of the District of Columbia. (July 8, 1898, 30 Stat. 724, ch. 640, § 2; 1973 Ed., § 7-1102.)

Cross references. — As to powers and duties of Mayor concerning public highways, see § 7-102.

Section references. — This section is referred to in § 7-803.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-803. Notice to remove; service.

Whenever, under the provisions of §§ 7-801 and 7-802, any barbed wire in use in whole or in part on July 8, 1898, for a fence, barrier, or obstruction, along the line of or in or upon any street, avenue, alley, road, or other public walk, driveway, or public or private parking within the District of Columbia is required to be removed, said wire shall be removed by the owner of the building or other property upon which such fence, barrier, or obstruction exists, or his or her agent, within 30 days from the service by the Inspector of Buildings of

said District of a notice, served in like manner as notices in regard to assessment and permit work are required by law to be served, directing the owner, agent, or other person or persons owning or controlling the land, structure, or other property upon which such fence or barrier exists to remove the same. (July 8, 1898, 30 Stat. 724, ch. 640, § 3; 1973 Ed., § 7-1103.)

§ 7-804. Penalties.

Any person violating any of the provisions of this chapter shall, upon conviction thereof in the Superior Court of the District of Columbia be fined not more than \$10 for each day such violation shall continue. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules and regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (July 8, 1898, 30 Stat. 725, ch. 640, § 4; Apr. 1, 1942, 56 Stat. 190, ch 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 7-1104; Oct. 5, 1985, D.C. Law 6-42, § 473, 32 DCR 4450.)

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was

adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

§ 7-805. Failure to remove.

In case the owner, agent, or other person or persons in control of the property along which such fence, barrier, or obstruction unlawfully exists cannot be found within 5 days after the issue of such notice, the Mayor of the District of Columbia shall publish such notice twice a week for 2 successive weeks in 1 daily newspaper of general circulation published in the District of Columbia. If within 5 days after the last publication of said notice the fence, barrier, or obstruction therein described be not removed, the Inspector of Buildings of said District shall immediately cause such fence, barrier, or obstruction to be removed, and the expense of such removal shall be paid out of the Assessment and Permit Fund; and the cost of such removal, together with the cost of said advertising, shall be assessed against said property and collected as general taxes in said District are assessed and collected; and the funds from which said payments are made shall be reimbursed from such collections. (July 8, 1898, 30 Stat. 725, ch. 640, § 5; 1973 Ed., § 7-1105.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Department of Inspections abolished. —

The Department of Inspections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization, and functions of the new Department. The Order provided that all of the functions and positions of the following named organizations were transferred to the new Department of

Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section, and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952 the named organizations were abolished. Functions vested in the Department of Licenses and Inspection by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by the Department of Licenses, Investigation and Inspections by Mayor's Order No. 78-42, dated February 17, 1978.

CHAPTER 9. REMOVAL OF SNOW AND ICE.

Sec.

- 7-901. Removal from sidewalks by owner or occupant of abutting property.
 7-902. Removal from sidewalks adjacent to public property.
 7-903. Removal from sidewalks adjacent to federal buildings.

Sec.

- 7-904. Temporary use of sand and ashes.
 7-905. Failure of owner or occupant to remove — Removal by Mayor.
 7-906. Same — Suit to recover cost.
 7-907. Appropriations.

§ 7-901. Removal from sidewalks by owner or occupant of abutting property.

It shall be the duty of every person, partnership, corporation, joint-stock company, or syndicate in charge or control of any building or lot of land within the fire limits of the District of Columbia, fronting or abutting on a paved sidewalk, whether as owner, tenant, occupant, lessee, or otherwise, within the first 8 hours of daylight after the ceasing to fall of any snow or sleet, to remove and clear away, or cause to be removed and cleared away, such snow or sleet from so much of said sidewalk as is in front of or abuts on said building or lot of land. (Sept. 16, 1922, 42 Stat. 845, ch. 318, § 1; 1973 Ed., § 7-801.)

Section did not change or add to the basic liability of the District government with respect to safe conditions on public streets. *Smith v. District of Columbia*, 189 F.2d 671 (D.C. Cir. 1951).

District held liable for dangerous sidewalk on federal property. — Even though § 7-903 of this chapter makes it the duty of the Director of National Park Service to remove snow and ice from the sidewalks in front of or around a reservation owned by the United States, and even though the sidewalk on which the plaintiff fell was part of a public sidewalk surrounding a federally owned reservation on which was situated the Municipal Court buildings, the District of Columbia was nevertheless liable for the pedestrian's injuries resulting from a fall due to the dangerous and unusual sidewalk formations of snow and ice which the District had actual or constructive notice for a reasonable period of time. *Campbell v. District of Columbia*, 153 F. Supp. 730 (D.D.C. 1957), *aff'd*, 254 F.2d 357 (D.C. Cir. 1958).

Liability of property owner to pedestrian. — This section does not purport affirmatively to make the property owner liable to respond in damages to a pedestrian who is injured by falling on the snow or ice which owner has not removed from the abutting sidewalk. *Radinsky v. Ellis*, 167 F.2d 745 (D.C. Cir. 1948).

Proof required by injured pedestrian. — The essential elements for recovery against the District of Columbia for injuries sustained in a fall on an icy sidewalk running before the buildings under control of the District are that

the formations which caused or contributed to the injuries were of such size or location as to be dangerous and unusual in some way other than original slipperiness caused by weather conditions and that the District had actual or constructive notice of the particular condition and a reasonable period of time in which to remove the formations so as to make the sidewalk reasonably safe for travel. *Campbell v. District of Columbia*, 243 F.2d 226 (D.C. Cir. 1957).

If snow or ice has been permitted to remain untreated on a sidewalk or crosswalk and has formed into shapes of such size and location as to constitute a danger, aggravated over its original mere slipperiness, and is unusual in comparisons with the general conditions naturally prevalent throughout the City, and if the condition has remained for a period sufficient to give rise to constructive notice to municipal authorities, and an opportunity for them to remedy it, the municipality is liable for injuries of which dangerous condition is proximate cause. *District of Columbia v. Smith*, App. D.C., 297 A.2d 787 (1972).

To recover for injuries sustained in a sidewalk fall, for an alleged negligence in failing to remove the ice and snow, against a person in control of the abutting building, the plaintiff is not required to show that the formations of ice and snow complained of are entirely unique and that similar ones exist nowhere in the City. *Campbell v. District of Columbia*, 243 F.2d 226 (D.C. Cir. 1957).

No private action right. — There is no private right of action in the snow removal law. *Albertie v. Louis & Alexander Corp.*, App. D.C., 646 A.2d 1001 (1994).

§ 7-902. Removal from sidewalks adjacent to public property.

It shall be the duty of the Mayor of the District of Columbia within the first 8 hours of daylight after the ceasing to fall of any snow or sleet, or after the accumulation of ice on the paved sidewalks within the fire limits of the District of Columbia, in front of or adjacent to all public buildings, public squares, reservations, and open spaces in the said District owned or held by lease by said District, to cause such snow, sleet, and ice to be removed; and also to cause the same to be removed from all crosswalks of improved streets and places of intersection of alleys with paved sidewalks, and also from all paved sidewalks or crosswalks used as public thoroughfares through all public squares, reservations, or open spaces within the fire limits of said District owned or held by lease by the District of Columbia; but in the event of inability to remove such accumulation of snow, sleet, and ice without injury to the sidewalk, by reason of the hardening thereof, it shall be his duty, within the first 8 hours of daylight after the hardening thereof, to make reasonably safe for travel, or cause to be made reasonably safe for travel, by the sprinkling of sand or ashes thereon, such paved sidewalks, crosswalks, and places of intersection of alleys with paved sidewalks, and shall, as soon thereafter as the weather shall permit, thoroughly clean, or cause to be thoroughly cleaned, said sidewalks, crosswalks, and places of intersection of alleys with paved sidewalks. (Sept. 16, 1922, 42 Stat. 845, ch. 318, § 2; 1973 Ed., § 7-802.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Section did not change or add to basic liability of District government with respect to safe conditions on public streets. *Smith v. District of Columbia*, 189 F.2d 671 (D.C. Cir. 1951).

District has primary responsibility for maintaining streets and sidewalks in reasonably safe condition, regardless of who owns

the fee in such streets and sidewalks, in absence of special circumstances such as accumulation of snow or ice or improvement of the way in question by the United States. *Conner v. United States*, 309 F. Supp. 446 (D.D.C. 1970).

But District does not have to render condition absolutely harmless. *Campbell v. District of Columbia*, 243 F.2d 226 (D.C. Cir. 1957).

Primary duty of clearing snow and ice from sidewalk along South Building of Department of Agriculture in the District of Columbia was on the United States, and therefore the District of Columbia was not liable for injuries sustained by employee of the Department of Agriculture in a fall on icy sidewalk. *Daniels-Lumley v. United States*, 306 F.2d 769 (D.C. Cir. 1962).

Proof required by injured pedestrian. — The essential elements for recovery against the District of Columbia for injuries sustained in fall on icy sidewalk running before the buildings under control of the District are that the formations which caused or contributed to the injuries were of such size or location as to be dangerous and unusual in some way other than the original slipperiness caused by the weather conditions, and that the District had a reasonable period of time in which to remove the formations by actual or constructive notice of the particular condition so as to make the

sidewalk reasonably safe for travel. *Campbell v. District of Columbia*, 243 F.2d 226 (D.C. Cir. 1957).

To recover for injuries sustained in a sidewalk fall, for the alleged negligence in failing to remove ice and snow, against a person in con-

trol of abutting building, the plaintiff is not required to show that the formations of ice and snow complained of are entirely unique and that similar ones exist nowhere in City. *Campbell v. District of Columbia*, 243 F.2d 226 (D.C. Cir. 1957).

§ 7-903. Removal from sidewalks adjacent to federal buildings.

It shall be the duty of the Director of National Park Service within the first 8 hours of daylight after the ceasing to fall of any snow or sleet, or after the accumulation of ice upon the paved sidewalks within the fire limits of the District of Columbia, to remove or cause to be removed from such sidewalks as are in front of or adjacent to all buildings owned or leased by the United States, except the Capitol buildings and grounds and the Library of Congress building, and from all paved sidewalks or crosswalks used as public thoroughfares in front of, around, or through all public squares, reservations, or open spaces within the fire limits of the District of Columbia, owned or leased by the United States, such snow, sleet, and ice; but in the event of inability to remove such accumulation of snow, sleet, and ice, by reason of the hardening thereof, without injury to the sidewalk, it shall be his duty, within the first 8 hours of daylight after the hardening of such snow, sleet, and ice, to make reasonably safe for travel, or cause to be made reasonably safe for travel, by the sprinkling of sand or ashes thereon, such paved sidewalks and crosswalks, and shall, as soon thereafter as the weather shall permit, thoroughly clean said sidewalks and crosswalks. (Sept. 16, 1922, 42 Stat. 845, ch. 318, § 3; 1973 Ed., § 7-803.)

District has primary responsibility for maintaining streets and sidewalks in a reasonably safe condition, regardless of who owns the fee in such streets and sidewalks, in the absence of special circumstances such as the accumulation of snow or ice or the improvement of the way by the United States. *Conner v. United States*, 309 F. Supp. 446 (D.D.C. 1970).

Primary duty of clearing snow and ice from sidewalk along South Building of Department of Agriculture in the District of Columbia was on the United States, and therefore the District of Columbia was not liable for injuries sustained by an employee of the Department of Agriculture resulting from a fall on the icy sidewalk. *Daniels-Lumley v. United States*, 306 F.2d 769 (D.C. Cir. 1962).

District not barred from suit. — This section does not shift responsibility for the removal of snow from the streets and sidewalks adjacent to federal property from the District of Columbia to the Director of the National Park Service in such sense as to bar a suit against District for personal injuries sustained by a pedestrian in a fall on a slippery sidewalk. *District of Columbia v. Campbell*, 254 F.2d 357 (D.C. Cir. 1958).

The existence of a District custodial force for snow removal in a particular area, the prior practice of the District in undertaking such snow and ice treatment of a particular sidewalk, repeated unremoved accumulations (or other forms of "notice" to the District), are all factors which might be pertinent to the question of the existence of a common-law duty on the part of the District. *Taylor v. District of Columbia*, App. D.C., 515 A.2d 1149 (1986).

District liable for dangerous sidewalk on federal property. — Even though this section makes it the duty of the Director of the National Park Service to remove snow and ice from sidewalks in front of or around a reservation owned by the United States, and even though the sidewalk upon which the plaintiff fell was part of the public sidewalk surrounding a federally owned reservation, the District of Columbia was nevertheless liable for the pedestrian's injuries in a fall due to the dangerous and unusual sidewalk formations of the snow and ice of which the District had actual or constructive notice for a reasonable period of time. *Campbell v. District of Columbia*, 153 F. Supp. 730 (D.D.C. 1957), *aff'd*, 254 F.2d 357 (D.C. Cir. 1958).

§ 7-904. Temporary use of sand and ashes.

In case the snow, sleet, and ice cannot be removed from so much of the paved sidewalks within the fire limits of the District of Columbia as front upon or abut such buildings or lots of land as are not owned or held by lease by the District of Columbia or the United States without injury to said sidewalks, because of the hardening thereof, the person, partnership, corporation, joint-stock company, or syndicate in charge or control of such buildings or lots of land, whether as owner, tenant, occupant, lessee, or otherwise, shall, within the first 8 hours of daylight after the same has formed, make reasonably safe for travel, or cause to be made reasonably safe for travel, by the sprinkling of sand or ashes thereon, said sidewalks, and shall, as soon thereafter as the weather shall permit, thoroughly clean said sidewalks. (Sept. 16, 1922, 42 Stat. 845, ch. 318, § 4; 1973 Ed., § 7-804.)

Section did not change or add to basic liability of District government with respect to safe conditions on public streets. *Smith v. District of Columbia*, 189 F.2d 671 (D.C. Cir. 1951).

Proof required by injured pedestrian. — The essential elements for recovery against the District of Columbia for injuries sustained in a fall on an icy sidewalk running before the buildings under the control of the District are that the formations which caused or contributed to the injuries were of such size or location as to be dangerous and unusual in some way other than the original slipperiness caused by the weather conditions and that the District

had actual or constructive notice of the particular condition and a reasonable period of time in which to remove the formations so as to make the sidewalk reasonably safe for travel. *Campbell v. District of Columbia*, 243 F.2d 226 (D.C. Cir. 1957).

To recover for injuries sustained in a sidewalk fall, for the alleged negligence in failing to remove ice and snow, against the person in control of the abutting building, the plaintiff is not required to show that the formations of ice and snow complained of are entirely unique and that similar ones exist nowhere in the City. *Campbell v. District of Columbia*, 243 F.2d 226 (D.C. Cir. 1957).

§ 7-905. Failure of owner or occupant to remove — Removal by Mayor.

In the event of the failure of any person, partnership, corporation, joint-stock company, or syndicate to remove or cause to be removed such snow or ice from the said sidewalks, or to make the same reasonably safe for travel, or cause the same to be made reasonably safe for travel, as hereinbefore provided, it shall be the duty of the Mayor of the District of Columbia, as soon as practicable after the expiration of the time herein provided for the removal thereof, or for the making of the said sidewalks reasonably safe for travel, to cause the snow and ice in front of such building or lot of land to be removed or to cause the same to be made reasonably safe, as hereinbefore directed to be done by such person, partnership, corporation, joint-stock company, or syndicate in charge or control of such building or lot of land, and the amount of the expense of such removal or such work of making the said sidewalks reasonably safe for travel, shall in each instance be ascertained and certified by the said Mayor to the Corporation Counsel of the District of Columbia. (Sept. 16, 1922, 42 Stat. 846, ch. 318, § 5; 1973 Ed., § 7-805.)

Change in government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Section did not change or add to basic liability of District government with respect to safe conditions on public streets. *Smith v. District of Columbia*, 189 F.2d 671 (D.C. Cir. 1951).

§ 7-906. Same — Suit to recover cost.

The Corporation Counsel is hereby directed and authorized to sue for and recover from such person, partnership, corporation, joint-stock company, or syndicate, the amount of such expense in the name of the District of Columbia, together with a penalty not exceeding \$25 for each offense, with costs, and when so recovered the amount shall be deposited to the credit of the District of Columbia. (Sept. 16, 1922, 42 Stat. 846, ch. 318, § 6; 1973 Ed., § 7-806.)

No private right of action. — There is no private right of action in the snow removal law.

Albertie v. Louis & Alexander Corp., App. D.C., 646 A.2d 1001 (1994).

§ 7-907. Appropriations.

Notwithstanding any other provision of law, appropriations for the Department of Transportation and the Department of Environmental Services of the government of the District of Columbia shall be available for purposes of snow and ice removal when so ordered by the Mayor of the District of Columbia. (1973 Ed., § 7-807; Oct. 26, 1973, 87 Stat. 507, Pub. L. 93-140, § 14.)

References in text. — Department of Transportation was substituted for Department of Highways and Traffic, near the beginning of this section, pursuant to Reorganization Plan No. 2 of 1975, dated July 24, 1975.

The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

The functions of the Department of Environmental Services were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Change in government. — This section originated at a time when local government

powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 10. RENTAL AND UTILIZATION OF PUBLIC SPACE.

Subchapter I. Rental of Public Space.

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- 7-1001. Definitions.
- 7-1002. Assessment of rent from United States, District or foreign governments not authorized.
- 7-1003. Minor uses without rental payments authorized.
- 7-1004. Rental of public space on or above surface of ground — Regulations authorized; conditions.
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- 7-1011. Removal of vault — Order by Mayor; failure to remove.
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- 7-1014. Use of vault for utility installation or construction.
- 7-1015. Vault abutting single- or two-family dwelling exempt from rental charge.
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Sec.

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- 7-1031. Definitions.
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Subchapter I. Rental of Public Space.

§ 7-1001. Definitions.

As used in this subchapter, unless the context requires otherwise:

- (1) "Mayor" means the Mayor of the District or his designated agent.
- (2) "District" means the District of Columbia.
- (3) "Owner" means:

(A) Any person, or any one of a number of persons, in whom is vested all or any part of the beneficial ownership, dominion, or title of property;

(B) The committee, conservator, or legal guardian of an owner who is non compos mentis, a minor child, or otherwise under a disability; or

(C) A trustee elected or appointed, or required by law, to execute a trust, other than a trustee under a deed of trust to secure the repayment of a loan.

(4) "Parking" means that area of public space which lies between the property line and the edge of the actual or planned sidewalk which is nearer to such property line, as such property line and sidewalk are shown on the records of the District.

(5) "Property line" means the line of demarcation between privately owned property fronting or abutting a street and the publicly owned property in the line of such street.

(6) "Public space" means all the publicly owned property between the property lines on a street, as such property lines are shown on the records of the District, and includes any roadway, tree space, sidewalk, or parking between such property lines.

(7) "Street" means a public highway as shown on the records of the District, whether designated as a street, alley, avenue, freeway, road, drive, lane, place, boulevard, parkway, circle, or by some other term.

(8) "Vault" means a structure or an enclosure of space beneath the surface of the public space, including but not limited to tanks for petroleum products, except that the term "vault" shall not include public utility structures, pipelines, or tunnels constructed under the authority of subsection (d) of § 1-337, or structures or facilities of the United States or the District of Columbia, or of any governmental entity or foreign government, or any structure or facility included in any lease agreement entered into by the Mayor. If such structure or enclosure of space be divided approximately horizontally into 2 or more levels, the term "vault" as used in this subchapter shall be considered as applying to 1 such level only, and each such level shall be considered a separate vault within the meaning of this subchapter. (Oct. 17, 1968, 82 Stat. 1156, Pub. L. 90-596, title I, § 103; 1973 Ed., § 7-902.)

Section references. — This section is referred to in § 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the

District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Alvarez v. United States*, App. D.C., 576 A.2d 713, cert. denied, 498 U.S. 875, 111 S. Ct. 203, 112 L. Ed 2d 164 (1990).

§ 7-1002. Assessment of rent from United States, District or foreign governments not authorized.

Nothing contained in this subchapter shall be construed as requiring the Mayor to assess and collect rent from the government of the United States, the government of the District of Columbia, or any foreign government, for the use, in accordance with the provisions of §§ 7-1004 to 7-1015, of public space abutting property owned by any such government or governmental entity, nor shall any such government or governmental entity be subject to the payment of any rent required by this subchapter. (Oct. 17, 1968, 82 Stat. 1157, Pub. L. 90-596, title I, § 104; 1973 Ed., § 7-903.)

Section references. — This section is referred to in §§ 7-1013 and 7-1024.

Change in government. — This section originated at a time when local government

powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the Dis-

trict of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1003. Minor uses without rental payments authorized.

Notwithstanding any other provisions of this subchapter, the Mayor is authorized, in his judgment and pursuant to regulations adopted and promulgated by the Council of the District of Columbia, to permit the occupancy of public space for minor uses without requiring rental payments when the fixing and collection of rental charges would not be feasible. (Oct. 17, 1968, 82 Stat. 1157, Pub. L. 90-596, title I, § 105; 1973 Ed., § 7-904.)

Section references. — This section is referred to in §§ 7-1013 and 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1004. Rental of public space on or above surface of ground — Regulations authorized; conditions.

The Council of the District of Columbia is authorized to provide by regulation for the rental of portions of public space on or above the surface of the pavement or the ground, as the case may be, and not actually required for the use of the general public, for such period of time as the said space may not be so required or for any lesser period: Provided, that nothing herein contained shall be construed as requiring the Council to require the payment of rent as a condition to the use of public space: (1) In accordance with the provisions of regulations promulgated under the authority of § 5-204; (2) by a public utility company for the installation and maintenance of any of its equipment or facilities, under permit issued by the District; or (3) for the sale of newspapers of general circulation: Provided further, that the proposed rental of public space within the area of the District of Columbia subject to the provisions of §§ 5-410 and 5-411, shall be submitted to the Commission of Fine Arts in accordance with the provisions of §§ 5-410 and 5-411. The regulations adopted by the Council of the District of Columbia shall provide that public space rented under the authority of §§ 7-1004 to 7-1006 shall be rented only to the owner of property fronting and abutting such public space; that any person using such space shall not acquire any right, title, or interest therein; that both the United States and the District of Columbia, and the officers and employees of each of them, shall be held harmless for any loss or damage arising out of the use of such space, or the discontinuance of any such use; that the Mayor may require such space to be vacated upon demand by him and its use discontinued, with or without notice, and with no recourse against either the United States or the District for any loss or damage occasioned by any such requirement; and

that if any such use be not discontinued by the time specified by the Mayor, the said Mayor may remove from such space any property left thereon or therein by any person using such space under the authority of §§ 7-1004 to 7-1006, at the risk and expense of the owner of the real property abutting such space. (Oct. 17, 1968, 82 Stat. 1157, Pub. L. 90-596, title II, § 201; 1973 Ed., § 7-905.)

Section references. — This section is referred to in §§ 7-1002, 7-1005, 7-1006, 7-1013, and 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1005. Same — Payments; refunds.

The Council of the District of Columbia shall by regulation provide for the payment of rent for the use of public space as authorized by §§ 7-1004 to 7-1006. The annual rent for such space shall be a fair and equitable amount fixed by the Council from time to time in accordance with regulations adopted by it, generally establishing categories of use and providing that the rent for each category of use shall bear a reasonable relationship to the assessed value of the privately owned land abutting such space, depending on the nature of the category of use and the extent to which the public space may be utilized for such purpose, but in no event shall the annual rent for the public space so utilized be at a rate of less than 4 per centum per annum of the current assessed value of an equivalent area of the privately owned space immediately abutting the public space so utilized: Provided, that the annual rent for public space used as an unenclosed sidewalk cafe shall be \$5 per square foot and the annual rent for public space used as an enclosed sidewalk cafe shall be \$10 per square foot. Unenclosed flower and fruit stands shall be charged the same rate as unenclosed sidewalk cafes, and enclosed flower and fruit stands shall be charged the same rate as enclosed sidewalk cafes. Such rent shall be payable in advance for such periods as may be fixed by the Council. In the event the Mayor requires any person using public space under the authority of §§ 7-1004 to 7-1006 to vacate all or part of any space for which rent has been paid, the Mayor is authorized to refund so much of such prepaid rent as may be represented by the amount of space so vacated and by the length of time remaining in the period for which rent was paid. (Oct. 17, 1968, 82 Stat. 1158, Pub. L. 90-596, title II, § 202; 1973 Ed., § 7-906; Sept. 17, 1982, D.C. Law 4-148, § 5, 29 DCR 3361; July 23, 1992, D.C. Law 9-134, § 101, 39 DCR 4066; Sept. 10, 1992, D.C. Law 9-145, § 101(a), 39 DCR 4895; Aug. 6, 1993, D.C. Law 10-11, § 117, 40 DCR 4007; Sept. 30, 1993, D.C. Law 10-25, § 117, 40 DCR 5489.)

Section references. — This section is referred to in §§ 7-1002, 7-1004, 7-1006, 7-1013, and 7-1024.

Effect of amendments. — Section 117 of D.C. Law 10-25 inserted the third sentence.

Temporary amendments of section. —

Section 117 of D.C. Law 10-11 inserted the third sentence.

Section 601(a)(6) of D.C. Law 10-11 provided that § 117 shall apply as of July 1, 1993.

Section 701(b) of D.C. Law 10-11 provided that the act shall expire on the 225th day of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 117 of the Omnibus Budget Support Emergency Act of 1993 (D.C. Act 10-32, June 3, 1993, 40 DCR 3658).

Section 601 of D.C. Act 10-32 provides for application of the act.

Legislative history of Law 4-148. — Law 4-148, the "Enclosed Sidewalk Cafe Act of 1982," was introduced in Council and assigned Bill No. 4-334, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 8, 1982, and July 6, 1982, respectively. Signed by the Mayor on July 21, 1982, it was assigned Act No. 4-219 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-134. — Law 9-134, the "Omnibus Budget Support Temporary Act of 1992," was introduced in Council and assigned Bill No. 9-485. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Approved without the signature of the Mayor on May 29, 1992, it was assigned Act No. 9-219 and transmitted to both Houses of Congress for its review. D.C. Law 9-134 became effective on July 23, 1992.

Legislative history of Law 9-145. — Law 9-145, the "Omnibus Budget Support Act of 1992," was introduced in Council and assigned Bill No. 9-222, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 12, 1992, and June 2, 1992, respectively. Approved without the signature of the Mayor on June 22, 1992, it was assigned Act No. 9-225 and transmitted to

both Houses of Congress for its review. D.C. Law 9-145 became effective on September 10, 1992.

Legislative history of Law 10-11. — D.C. Law 10-11, the "Omnibus Budget Support Temporary Act of 1993," was introduced in Council and assigned Bill No. 10-259. The Bill was adopted on first and second readings on May 4, 1993, and June 1, 1993, respectively. Signed by the Mayor on June 15, 1993, it was assigned Act No. 10-39 and transmitted to both Houses of Congress for its review. D.C. Law 10-11 became effective on August 6, 1993.

Legislative history of Law 10-25. — D.C. Law 10-25, the "Omnibus Budget Support Act of 1993," was introduced in Council and assigned Bill No. 10-165, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-57 and transmitted to both Houses of Congress for its review. D.C. Law 10-25 became effective on September 30, 1993.

Application of Law 10-25. — Section 601(a)(6) of D.C. Law 10-25 provided that § 117 of the act shall apply as of July 1, 1993, for rental years beginning July 1, 1993.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1006. Use of property subject to the requirements of § 7-117.

The Mayor is authorized, with respect to property subject to the requirements of § 7-117, to allow the same use to be made of such property as, under the authority of §§ 7-1004 to 7-1006, he allows to be made of the public space abutting such property. Any such use of such property shall be subject to the same conditions as are applicable to the use of the abutting public space, with the exception of the payment of rent. (Oct. 17, 1968, 82 Stat. 1158, Pub. L. 90-596, title II, § 203; 1973 Ed., § 7-907.)

Section references. — This section is referred to in §§ 7-1002, 7-1004, 7-1005, 7-1013, and 7-1024.

References in text. — Section 7-117, referred to in the first sentence was repealed, effective March 10, 1983, by D.C. Law 4-201,

§ 713. For present provisions regarding the naming of public places, see subchapter IV of Chapter 4 of this title.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1007. Rental of subsurface space — Permit; conditions; recordation.

The Mayor is authorized to issue a permit for the use of a vault constructed prior to the effective date of this subchapter, or for the construction of a vault after such effective date, only to the owner of the real property abutting the public space in which such vault is or will be located. The issuance of each such permit shall be conditioned on the prior execution by such owner of an agreement acknowledging, for himself, his heirs and assigns: (1) That no right, title, or interest of the public is thereby acquired, waived, or abridged; (2) that the Mayor may inspect such vault during regular business hours; (3) that the Mayor may introduce or authorize the introduction into or through such vault with, right of entry for inspection, maintenance, and repair, of any water pipe, gas pipe, sewer, conduit, other pipe, or other public or public utility underground construction, which the Mayor deems necessary in the public interest to place in or through such vault; (4) that such vault will be changed by the owner, or by the District at the expense of such owner, to conform with any change made in the street, roadway, or sidewalk width or grade; and (5) that rental for such vault will be paid to the District as required by this subchapter. A copy of such agreement shall be recorded in the Office of the Recorder of Deeds by and at the expense of such owner. (Oct. 17, 1968, 82 Stat. 1158, Pub. L. 90-596, title III, § 302; 1973 Ed., § 7-908.)

Section references. — This section is referred to in §§ 7-1002, 7-1009, 7-1010, 7-1013, 7-1015, 7-1016, and 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Use of public space under Dupont Circle. — See Act of May 22, 1975, D.C. Law 1-4, §§ 101 to 104.

§ 7-1008. Same — Assessment; collection.

The Mayor is authorized and directed to assess and collect rent from the owners of abutting property for any vault located in the public space abutting such property, unless such vault shall have been removed, filled, sealed, or otherwise rendered unusable in a manner satisfactory to the Mayor. (Oct. 17, 1968, 82 Stat. 1159, Pub. L. 90-596, title III, § 303; 1973 Ed., § 7-909.)

Section references. — This section is referred to in §§ 7-1002, 7-1009, 7-1010, 7-1013, 7-1015, 7-1016, and 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1009. Same — Fixed by Council; waiver.

Each owner of property abutting public space in which a vault is located shall pay an annual rent fixed from time to time by the Council of the District of Columbia for such vault, but such annual rent shall not be less than \$10, and such rent shall be subject to collection from said owner in the manner prescribed by §§ 7-1007 to 7-1015, regardless of whether any use is made of such vault, and regardless of the extent of any use: Provided, that no rent for any rental year for a vault shall be charged to the owner of abutting property if said owner, prior to July 1st of such year, has notified the Mayor in writing that he has abandoned such vault and has performed such work as may be required by the District in connection with the sealing off or filling of such vault, or both. (Oct. 17, 1968, 82 Stat. 1159, Pub. L. 90-596, title III, § 304; 1973 Ed., § 7-910.)

Section references. — This section is referred to in §§ 7-1002, 7-1010, 7-1013, 7-1015, 7-1016, and 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1010. Same — Annual payment required; refunds.

(a) The owner of property abutting public space in which any vault is located, as such owner may be recorded in the real estate assessment records of the District, shall pay the rent established in accordance with §§ 7-1007 to 7-1015 for such vault. Such rent shall be payable annually for the year commencing July 1st and ending the following June 30th, and shall be payable in full prior to the beginning of such year. In the case of vaults constructed between July 1st and January 1st of any year, one-half of the annual rent for any such vault, shall be payable in full prior to the 1st of January immediately following the completion of such vault. In the case of vaults constructed between January 1st and July 1st of the succeeding year, no rent shall be charged for any vault completed within such period, but the owner of the property abutting the public space in which such vault is located shall, prior to the 1st of July immediately following the completion of any such vault, pay in full the annual rent for such vault, for the rental year commencing on such

July 1st. Interest at the rate of 1 per centum for each month or part thereof shall be charged in every case in which rent is not paid on or before the date on which any payment required by this section shall become due.

(b) In the event the Mayor requires or allows any person using subsurface public space under the authority of §§ 7-1007 to 7-1015 to vacate, voluntarily or involuntarily, all or part of any space for which rent has been paid, the Mayor is authorized to refund so much of such prepaid rent as may be represented by the amount of space so vacated and by the length of time remaining in the period for which rent was paid: Provided, that the Mayor may deduct from such prepayment any amount due the District in compensation for expenses to the District in connection with the use or abandonment of said space. (Oct. 17, 1968, 82 Stat. 1159, Pub. L. 90-596, title III, § 305; 1973 Ed., § 7-911.)

Section references. — This section is referred to in §§ 7-1002, 7-1009, 7-1013, 7-1015, 7-1016, and 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1011. Removal of vault — Order by Mayor; failure to remove.

(a) Whenever the Mayor determines that any vault is unsafe or is not in use, or the space occupied by such vault is required for street improvements, or the construction or extension of sewers, water mains, other public works, or public utility facilities, the Mayor is authorized to serve upon the owner of property abutting public space occupied by such vault an order requiring such owner to remove in whole or in part, reconstruct, repair, or close such vault by filling, sealing, or otherwise rendering unusable in a manner satisfactory to the Mayor. The failure or refusal of any such owner to comply with such order of the Mayor within the time specified in such order shall constitute a violation of this subchapter.

(b) In the event that any owner of property abutting an unused or unsafe vault fails to remove in whole or in part, reconstruct, repair, or close the same by filling, sealing, or otherwise rendering unusable in a manner satisfactory to the Mayor within the time specified by him, the Mayor is authorized to apply to the Superior Court of the District of Columbia for, and the said Court is hereby authorized to issue, an order empowering the Mayor to enter upon the property of such owner for the purpose of performing such work as may be necessary in connection with the removal, reconstruction, repair, or closure of such vault, and the District and its officers and employees shall not be liable for any damage to real or personal property which may result from the performance of any such work, other than such damage as may be caused by the gross negligence of the District or of any of its officers or employees. Process in

connection with the application for such order shall be served on the owner in accordance with the rules of said Court relating to the service of process in civil actions. In the event such owner is not to be found in the District after reasonable search and an affidavit to this effect is made on behalf of the District, such process may be served by publications for 1 day each week for 3 consecutive weeks in a newspaper of general circulation in the District, and, if service of process is by publication, a copy of such process and publication shall be sent to such owner by certified mail at his last known address as recorded in the real estate assessment records of the District. (Oct. 17, 1968, 82 Stat. 1160, Pub. L. 90-596, title III, § 306; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 7-912.)

Section references. — This section is referred to in §§ 7-1002, 7-1009, 7-1010, 7-1013, 7-1015, 7-1016, and 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1012. Same — Notice to owner; immediate action.

Notwithstanding the provisions of the preceding section, whenever the Mayor finds that any vault or vault opening in such condition as to be imminently dangerous to persons or property, he shall immediately notify the owner, agent, or other person in charge of the private property abutting the public space in which such vault or vault opening is located, to cause such vault or vault opening to be made safe and secure. The person or persons so notified shall be allowed until 12:00 noon of the day following the service of such notice in which to commence making such vault or vault opening safe and secure: Provided, that in a case where the public safety requires immediate action the Mayor may enter upon the private property abutting the public space in which such vault or vault opening is located, with such workmen and assistants as may be necessary, and cause such vault or vault opening to be made safe and secure. In any case in which the Mayor performs any work under the authority of this section, the cost to the District of performing such work shall be charged against the private property abutting the public space in which such vault or vault opening is located, and shall be collected in the manner provided by § 7-1013. (Oct. 17, 1968, 82 Stat. 1160, Pub. L. 90-596, title III, § 307; 1973 Ed., § 7-913.)

Section references. — This section is referred to in §§ 7-1002, 7-1009, 7-1010, 7-1013, 7-1015, 7-1016, and 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly,

and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1013. Collection of rental payments; failure to make payments.

(a) The Mayor shall take such action as he in his discretion considers necessary or desirable to secure the payment to the District of rents due and payable on vaults; interest on late rental payments; the cost of any advertising required by §§ 7-1007 to 7-1015; the cost to the District of sealing off, removing in whole or in part, filling, reconstructing, repairing, or closing a vault or vault opening, or performing any other service in connection therewith; and interest at the rate of 1 per centum per month or part thereof in every case in which payment to the District for the cost of performing work authorized by §§ 7-1002 to 7-1015 is not made within 30 days after a bill for such cost shall have been rendered.

(b) Charges authorized to be made by §§ 7-1007 to 7-1015 and not paid within 90 days after the close of the fiscal year in which such charges accrue shall be levied by the Mayor as a tax against the property abutting the public space in which a vault is located, such tax to be collected as provided in this section. Such tax shall include, without limitation, rents due and payable on vaults, interest on late rental payments, costs for sealing off, removing in whole or in part, filling, repairing, reconstructing, or closing a vault or vault opening, interest on late payments of such costs, and any advertising required by §§ 7-1007 to 7-1015. The tax authorized to be levied and collected under this section may be paid without interest within 60 days from the date such tax was levied. Interest of one-half of 1 per centum for each month or part thereof shall be charged on all unpaid amounts from the expiration of 60 days from the date such tax was levied. Any such tax may be paid in 3 equal installments with interest thereon. If any such tax or part thereof shall remain unpaid after the expiration of 2 years from the date such tax was levied, the property against which said tax was levied may be sold for such tax or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general real estate taxes, if said tax with interest and penalties thereon shall not have been paid in full prior to said sale. (Oct. 17, 1968, 82 Stat. 1160, Pub. L. 90-596, title III, § 308; 1973 Ed., § 7-914.)

Section references. — This section is referred to in §§ 7-1002, 7-1009, 7-1010, 7-1012, 7-1014, 7-1015, 7-1016, and 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1014. Use of vault for utility installation or construction.

(a) The Mayor is authorized to require that the use of a vault occupied or used under the authority of this subchapter shall be subject to the condition that the District shall have the right at any time to install or construct under, over, or through said vault any water pipe, gas pipe, sewer, conduit, other pipe, or other public or public utility underground construction that the Mayor may consider it necessary in the public interest to place in the space occupied by such vault, without compensation to the owner of the private property abutting the space in which such vault is located or to the person occupying or using such vault. Each person using or occupying a vault, upon notice from the Mayor that a water pipe, gas pipe, sewer, conduit, other pipe, or other public or public utility underground construction is to be introduced in the space occupied by such vault, shall commence to move, and forthwith remove, if necessary, any boiler, pipe, wall, beam, machinery, or construction in or pertaining to said vault, or any fixture or other thing therein, without cost to the District, so as to leave a space clear and sufficient in the judgment of the Mayor for the introduction and maintenance of any such underground construction or installation. The Mayor is further authorized to require each applicant for a permit to construct a vault in public space, as a condition precedent to the issuance of the permit, to agree for himself and his heirs and assigns that the Mayor shall have the right to enter upon the premises at any time for the inspection and proper maintenance or repair of any public underground construction or installation in such vault, and that in case there is any change in the street, roadway, or sidewalk above such vault, the vault shall be subject to a corresponding change, as directed by the Mayor, without expense to the District of Columbia.

(b) In the event a person occupying or using a vault under the authority of this subchapter shall fail or refuse to perform or to permit the performance of any work required by the Mayor under the authority of subsection (a) of this section, the Mayor is authorized to apply to the Superior Court of the District of Columbia for, and said Court is hereby authorized to issue, an order empowering the Mayor to enter upon the private property abutting the public space in which such vault is located for the purpose of performing such work as may be necessary in connection with the construction or installation in such public space of any water pipe, gas pipe, sewer, conduit, other pipe, or other underground construction or installation that the Mayor may consider it necessary or desirable to place in such space, and the District and its officers and employees shall not be liable for any damage to real or personal property which may result from the performance of any such work, other than such damage as may be caused by the gross negligence of the District or of any of its officers or employees. Process in connection with the application for such order shall be served on the owner in accordance with the rules of said Court relating to the service of process in civil actions. In the event such owner is not to be found in the District after reasonable search and an affidavit to this effect is made on behalf of the District, such process may be served by publication for

1 day each week for 3 consecutive weeks in a newspaper of general circulation in the District, and, if service of process is by publication, a copy of such process and publication shall be sent to such owner by certified mail at his last known address as recorded in the real estate assessment records of the District. The cost to the District of performing such work, including, without limitation, the reasonable cost to the District of securing the court order authorized by this subsection and any advertising in connection therewith, shall be a charge which may be levied by the Mayor as a tax against the property abutting the public space in which a vault is located, to be collected in the manner authorized by § 7-1013. (Oct. 17, 1968, 82 Stat. 1161, Pub. L. 90-596, title III, § 309; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 7-915.)

Section references. — This section is referred to in §§ 7-1002, 7-1009, 7-1010, 7-1013, 7-1015, 7-1016, and 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1015. Vault abutting single- or two-family dwelling exempt from rental charge.

Nothing contained in §§ 7-1007 to 7-1015 shall be construed as authorizing the Council of the District of Columbia to impose a rental charge for the use of any vault abutting real property on which is located a single- or two-family dwelling occupied solely for residential purposes, but any such vault shall otherwise be subject to the provisions of §§ 7-1007 to 7-1015. (Oct. 17, 1968, 82 Stat. 1162, Pub. L. 90-596, title III, § 310; 1973 Ed., § 7-916.)

Section references. — This section is referred to in §§ 7-1002, 7-1009, 7-1010, 7-1013, 7-1016, and 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1016. Regulations authorized.

The Council of the District of Columbia after public hearing is authorized to make and promulgate regulations to carry out the purposes of this subchapter. The regulations initially adopted by the Council under the authority of this section to carry out the purposes of §§ 7-1007 to 7-1015 shall become effective on the effective date of such sections, if, not less than 10 days prior to such date, the Council has adopted such regulations and printed a notice of such

adoption in a newspaper of general circulation in the District. Otherwise, the regulations adopted by the Council under the authority of this section shall become effective 10 days after notice of their adoption has been printed in a newspaper of general circulation in the District. (Oct. 17, 1968, 82 Stat. 1162, Pub. L. 90-596, title IV, § 401; 1973 Ed., § 7-917.)

Section references. — This section is referred to in § 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1017. Insurance requirements.

The Mayor shall, in connection with authorizing the use of any public space under the authority of this subchapter, require the person authorized to use such space, prior to any such use, to secure a policy of public liability and property damage insurance or other acceptable security providing for such minimum limits of liability as may be required by the Mayor. Any such insurance policy shall include the District and its officers and employees as additional parties insured and shall be cancellable only after 30 days written notice of such cancellation has been received by the Mayor. No such use of public space shall be authorized or continued for any period unless such insurance or other security is maintained in full force and effect during that period. Nothing herein contained shall be construed as requiring either the United States or the District to secure a policy of public liability and property damage insurance or other security covering any use of public space by either of the said governments under the authority of this subchapter. (Oct. 17, 1968, 82 Stat. 1162, Pub. L. 90-596, title IV, § 402; 1973 Ed., § 7-918.)

Section references. — This section is referred to in § 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1018. Service of orders and notices.

(a) Any order or notice required by this subchapter to be served shall be deemed to have been served when served by any of the following methods:

(1) When forwarded by certified mail to the last known address of the owner as recorded in the real estate assessment records of the District, with return receipt, and such receipt shall constitute prima facie evidence of service upon such owner if such receipt is signed either by the owner or by a person of

suitable age and discretion located at such address: Provided, that valid service upon the owner shall be deemed effected:

(A) If such order or notice shall be refused by the owner and not delivered for that reason; or

(B) When delivered to the person to be notified; or

(C) When left at the usual residence or place of business of the person to be notified with a person of suitable age and discretion then resident or employed therein; or

(D) If no such residence or place of business can be found in the District by reasonable search, then if left with any person of suitable age and discretion employed at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said order or notice relates; or

(E) If any such order or notice forwarded by certified mail be returned for reasons other than refusal, or if personal service of any such order or notice, as hereinbefore provided, cannot be effected, then if published for 1 day each week for 3 consecutive weeks in a daily newspaper published in the District; or

(F) If by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, then if served on the owner of record in a manner hereinbefore provided.

(2) Any order or notice to a corporation shall, for the purposes of this subchapter, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of orders or notices on natural persons holding property in their own right; and orders or notices to a foreign corporation shall, for the purposes of this subchapter, be deemed to have been served if served personally on any agent of such corporation, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District.

(b) In case such order or notice is served by any method other than personal service, notice shall also be sent to the owner by ordinary mail. (Oct. 17, 1968, 82 Stat. 1163, Pub. L. 90-596, title IV, § 403; 1973 Ed., § 7-919.)

Section references. — This section is referred to in § 7-1024.

§ 7-1019. Penalties.

Any person who shall violate any provision of this subchapter shall be punished by a fine not exceeding \$300 or by imprisonment for not more than 10 days. In addition, such regulations as may be adopted by the Council of the District of Columbia under the authority of this subchapter may provide for the imposition of a fine of not more than \$300 or imprisonment for not more than 10 days for each and every day any public space is used or occupied in a manner or for a purpose specifically prohibited by the said regulations. (Oct. 17, 1968, 82 Stat. 1163, Pub. L. 90-596, title IV, § 404; 1973 Ed., § 7-920.)

Section references. — This section is referred to in § 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1020. Deposit of rents collected.

Rent paid for the use of public space under the authority of this subchapter shall be deposited to the credit of such special funds or General Fund of the District in such proportions as the Mayor shall, in his discretion, determine. (Oct. 17, 1968, 82 Stat. 1164, Pub. L. 90-596, title IV, § 405; 1973 Ed., § 7-921.)

Section references. — This section is referred to in § 7-1024.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1021. Appropriations.

Appropriations to carry out the purposes of this subchapter are hereby authorized. (Oct. 17, 1968, 82 Stat. 1164, Pub. L. 90-596, title IV, § 406; 1973 Ed., § 7-922.)

Section references. — This section is referred to in § 7-1024.

§ 7-1022. Separability.

If any provision of this subchapter or of the regulations promulgated under the authority of this subchapter is held invalid, such invalidity shall not affect other provisions either of this subchapter or of the said regulations which can be effected without the invalid provisions, and to this end the provisions of this subchapter and the said regulations are separable. (Oct. 17, 1968, 82 Stat. 1164, Pub. L. 90-596, title IV, § 407; 1973 Ed., § 7-923.)

Section references. — This section is referred to in § 7-1024.

§ 7-1023. Subchapter not to affect provisions of § 7-117.

Nothing contained in this subchapter shall be construed to affect in any manner the provisions of § 7-117, with respect to streets heretofore or hereafter dedicated in accordance with the provisions of such section, and to make use of the parking on any such street in accordance with the terms of the 4th proviso of such section, relating to the height of parking and the projection

of buildings beyond the building line, the District's right-of-way through said parking for sewers and water mains free of cost, and the use of the parking by the District for the construction of sidewalks. (Oct. 17, 1968, 82 Stat. 1164, Pub. L. 90-596, title IV, § 408; 1973 Ed., § 7-924.)

Section references. — This section is referred to in § 7-1024.

References in text. — Section 7-117 referred to in the first sentence was repealed,

effective March 10, 1983, by D.C. Law 4-201, § 713. For present provisions regarding the naming of public places, see subchapter IV of Chapter 4 of this title.

§ 7-1024. Effective dates.

Sections 7-1001 to 7-1003 and 7-1016 to 7-1024 shall take effect on the date of approval of this subchapter. Sections 7-1004 to 7-1006 shall take effect the 1st day of the 1st month which occurs more than 30 days after the Council of the District of Columbia has first adopted and promulgated regulations to carry out the purposes of such sections. Sections 7-1007 to 7-1015 shall take effect on the 1st day of July which occurs 3 months or more after the date of approval of this subchapter. (Oct. 17, 1968, 82 Stat. 1164, Pub. L. 90-596, title IV, § 409; 1973 Ed., § 7-925.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Subchapter II. Rental of Airspace.

§ 7-1031. Definitions.

As used in this subchapter:

- (1) The term "Mayor" means the Mayor of the District of Columbia.
- (2) The term "District" means the District of Columbia.
- (3) The term "airspace" means the space above and below a street or alley under the jurisdiction of the Mayor. (Oct. 17, 1968, 82 Stat. 1166, Pub. L. 90-598, § 2; 1973 Ed., § 7-941.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of govern-

ment were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Levy v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 570 A.2d 739 (1990).

§ 7-1032. Mayor's authority with respect to use of airspace.

The Mayor, in conformity with the comprehensive plan for the National Capital prepared under § 1-2003, may:

- (1) Enter into leases for the use of airspace in the District to an extent not inconsistent with the use, operation, and maintenance of, any street or alley;
- (2) Use airspace for such public purposes as are authorized by law;
- (3) Enter into agreements with the federal government for the purpose of receiving grants or other financial assistance under the federal programs in connection with the construction, use or operation of any structure in airspace; and
- (4) Enter into agreements with the federal government to enable the federal government to construct federal buildings in the space above and below any street or alley, title to which is in the District. (Oct. 17, 1968, 82 Stat. 1166, Pub. L. 90-598, § 3; 1973 Ed., § 7-942.)

District of Columbia Public Space Committee established. — See Mayor's Order 83-54, February 17, 1983.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Levy v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 570 A.2d 739 (1990).

§ 7-1033. Terms and conditions to be included in leases.

Any lease of airspace entered into under this subchapter shall provide:

- (1) That such airspace shall not be used to deprive any real property not owned by the lessee of easements of light, air, and access;
- (2) For a clearance of at least 15 feet between the recorded grade of a street or alley and the lowest portion of any structure (other than supporting columns) constructed over such street or alley;
- (3) That upon the expiration or termination of the lease of airspace the Mayor may require (at the expense of the lessee or his successor in interest) the removal of any structure constructed or erected in such airspace and the restoration of such airspace to its condition prior to the construction or erection of such structure;
- (4) That all the rights, duties, terms, conditions, agreements, and covenants set forth and contained in such lease shall run with the abutting real property owned by the lessee and shall apply to the lessee, his heirs, legal representatives, successors, and assignees;
- (5) That the lessee shall, at his expense, record a copy of the lease in the Office of the Recorder of Deeds of the District of Columbia;
- (6) For the payment of such rents and fees, and the posting of such bond or such other security, by the lessee, as the Mayor determines to be necessary or desirable; and

(7) For such other terms and conditions as the Mayor determines to be necessary or desirable. (Oct. 17, 1968, 82 Stat. 1166, Pub. L. 90-598, § 4; 1973 Ed., § 7-943.)

Section references. — This section is referred to in § 7-1041.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1034. Execution of airspace leases.

The Mayor may execute a lease of airspace under this subchapter if:

(1) The lessee of the airspace has a fee simple title to the real property abutting such airspace and the lease is for airspace which lies only within the frontages of such abutting real property which are directly opposite;

(2) The Zoning Commission of the District of Columbia, after public hearing and after securing the advice and recommendations of the National Capital Planning Commission, has determined the use to be permitted in such airspace and has established regulations applicable to the use of such airspace consistent with regulations applicable to the abutting privately owned property, including limitations and requirements respecting the height of any structure to be erected in such airspace, offstreet parking and floor area ratios applicable to such structure, and easements of light, air, and access;

(3) The lessee has submitted to the Mayor, for his review and approval, plans, elevations, sections, a description of the texture, material, and method of construction of the exterior walls, and a scale model, of any structure to be erected in such airspace;

(4) The Mayor with respect to any structure proposed to be constructed in an area subject to §§ 5-410 and 5-411, or §§ 5-1101 to 5-1105 has submitted to the Commission of Fine Arts for its review and recommendations, plans, elevations, sections, a description of the texture, material, and method of construction of the exterior walls, and a scale model, of any such structure; and

(5) The Mayor, with respect to any structure proposed to be constructed over space utilized or to be utilized for the construction and operation of the subway of the Washington Metropolitan Area Transit Authority, has submitted to the Authority for its review and recommendations the plans, elevations, sections, and a scale model of any such structure. (Oct. 17, 1968, 82 Stat. 1167, Pub. L. 90-598, § 5; 1973 Ed., § 7-944.)

Section references. — This section is referred to in § 7-1041.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C.

Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Zoning Adjustment, App. D.C., 570 A.2d 739 (1990).

Cited in *Levy v. District of Columbia Bd. of*

§ 7-1035. Removal or relocation of public or private facilities.

The District shall not pay the cost of any removal or relocation of publicly or privately owned facilities in a street or alley in connection with the construction of a structure in airspace leased under this subchapter. No such facilities may be removed or relocated unless the Mayor has approved all arrangements for such removal or relocation. (Oct. 17, 1968, 82 Stat. 1167, Pub. L. 90-598, § 6; 1973 Ed., § 7-945.)

Section references. — This section is referred to in § 7-1041.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1036. Applicability of zoning and other laws.

Zoning laws and regulations and other laws and regulations applicable to the construction, use, and occupancy of buildings and premises, including building, electrical, plumbing, housing, health, and fire regulations, shall be applicable to structures constructed in airspace. (Oct. 17, 1968, 82 Stat. 1167, Pub. L. 90-598, § 7; 1973 Ed., § 7-946.)

Section references. — This section is referred to in § 7-1041.

§ 7-1037. Airspace and structures erected thereon deemed real property for purpose of taxation, water and sewer charges; exemptions.

For the purposes of this subchapter, airspace and structures constructed or erected in airspace shall be deemed to be real property and shall be liable to assessment, taxation, and water and sewer service charges by the District from the beginning of the term or period of such lease. For the purposes of real property assessments and taxation, the value of airspace, other than any structure constructed or erected in airspace, shall be its fair market value. No tax or assessment shall be levied with respect to airspace or structures in airspace:

(1) Occupied exclusively by the federal government or the District government; or

(2) Occupied and used by 1 or more organizations which, under § 47-1002, are exempt from real property taxation. (Oct. 17, 1968, 82 Stat. 1167, Pub. L. 90-598, § 8; 1973 Ed., § 7-947.)

Section references. — This section is referred to in § 7-1041.

§ 7-1038. Deposit of rents, fees, taxes, assessments, sewer and water charges; payment of expenditures.

(a) Except as provided by subsection (b) of this section, all collections, including rents and fees, received by the District under this subchapter shall be deposited in the Treasury of the United States in a trust fund, from which may be paid, in the same manner as is provided by law for other expenditures of the District, such expenditures as are necessary to carry out the purposes of this subchapter, including necessary expenses connected with the operation, maintenance, and disposition of property coming into the possession of the District by reason of a default under a lease entered into under this subchapter. The unobligated balance in such trust fund in excess of \$100,000 as of the end of any fiscal year shall be deposited in the Treasury to the credit of such special funds or the General Fund of the District in such proportions as the Mayor may determine.

(b) Taxes (including payments in lieu of taxes), special assessments, and sanitary sewer and water service charges shall be deposited directly to the respective funds to which such revenues are normally deposited. (Oct. 17, 1968, 82 Stat. 1168, Pub. L. 90-598, § 9; 1973 Ed., § 7-948.)

Section references. — This section is referred to in § 7-1041.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1039. Restoration of airspace upon expiration or termination of lease.

If, upon the expiration or termination of a lease of airspace under this subchapter: (1) The Mayor determines that any structure constructed or erected in such airspace should be removed or such airspace should be restored to its condition prior to the construction or erection of such structure; and (2) the lessee or his successor in interest, upon the request of the Mayor, fails, after a reasonable time, to remove such structure or to restore such airspace to its condition prior to the construction or erection of such structure; the Mayor may remove such structure and restore such airspace. The cost of such removal and restoration shall be assessed against the abutting properties as a tax. Such tax shall be collected in the manner prescribed by § 5-606, for the collection of amounts assessed as a tax under that section. (Oct. 17, 1968, 82 Stat. 1168, Pub. L. 90-598, § 10; 1973 Ed., § 7-949.)

Section references. — This section is referred to in § 7-1041.

Change in government. — This section originated at a time when local government

powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the

District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1040. Regulations authorized; penalties.

(a) The Council of the District of Columbia shall, after public hearing, promulgate such regulations as may be necessary to carry out this subchapter.

(b) Any regulations promulgated under this subchapter may provide for the imposition of a fine of not more than \$300, or imprisonment of not more than 90 days, or both, for any violation of such regulations. Prosecution for violations of such regulations shall be conducted in the name of the District by the Corporation Counsel.

(c)(1) The Mayor shall:

(A) Give any person violating a regulation promulgated under this subchapter notice of such violation; and

(B) Set a date by which such person shall comply with such regulation.

(2) Each day after such date during which there is a failure to comply with such regulation shall be a separate offense.

(d) The Mayor may maintain an action in the Superior Court of the District of Columbia to enjoin the continuing violation of any regulation adopted, under the authority of this subchapter, by the Council of the District of Columbia or by the Zoning Commission.

(e) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this subchapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Oct. 17, 1968, 82 Stat. 1168, Pub. L. 90-598, § 11; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(27); 1973 Ed., § 7-950; Oct. 5, 1985, D.C. Law 6-42, § 428, 32 DCR 4450.)

Section references. — This section is referred to in § 7-1041.

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government

powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1041. Federal and District governments authorized to construct airspace structures.

The federal government and District government are each authorized, without regard to the requirements of §§ 7-1033 through 7-1040, to construct any structure in airspace, subject to the following conditions:

(1) The government proposing to construct any structure in airspace shall have fee simple title to real property abutting such real property;

(2) The airspace to be occupied by such structure shall be only within the frontages of the real property abutting such airspace which are directly opposite;

(3) The airspace to be occupied by such structure shall not be used to deprive any real property, not owned by the federal government or District government, of its easements of light, air, or access;

(4) The construction of any such structure by the District government across a street or alley, the title to which is in the United States, shall be in accordance with an agreement between the Mayor and the Attorney General of the United States, subject to such terms and conditions as the Attorney General and the Mayor agree to include in the agreement;

(5) Section 5-432 shall apply to the construction of any structure in such airspace by the federal government and, to the extent required by subsection (c) of § 1-2004, to the construction of any structure in such airspace by the District government;

(6) Plans for the construction of any structure in such airspace by the federal government or the District government shall be subject to review by the National Capital Planning Commission in accordance with § 1-2004;

(7) The construction of any such structure by the federal government or the District government shall be subject to the recommendations of the Commission of Fine Arts to the extent required by §§ 5-410 and 5-411 or §§ 5-1101 to 5-1105. (Oct. 17, 1968, 82 Stat. 1169, Pub. L. 90-598, § 12; 1973 Ed., § 7-951.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1042. Actions to recover use of leased airspace.

If the federal government or the District government brings an action to recover the use of airspace leased under this subchapter, the government having title to the street or alley over or under which such airspace is located shall pay to the lessee of such airspace the fair market value of the remainder of his leasehold interest in such airspace. If the federal government recovers the use of airspace over or under a street to which it has title, the District government shall pay to the federal government an amount equal to the rents

and fees received by the District government for the rental of such airspace or an amount equal to the fair market value of the remainder of the leasehold interest in such airspace, whichever is smaller. (Oct. 17, 1968, 82 Stat. 1170, Pub. L. 90-598, § 13; 1973 Ed., § 7-952.)

§ 7-1043. Area exempted from provisions of subchapter.

This subchapter shall not apply to airspace within the area in the District bounded on the north by G Street Northeast and Northwest, on the south by G Street Southeast and Southwest, on the east by 11th Street Northeast and Southeast, and the west by 3rd Street Southwest and Northwest. (Oct. 17, 1968, 82 Stat. 1170, Pub. L. 90-598, § 14; 1973 Ed., § 7-953.)

CHAPTER 11. WASHINGTON NATIONAL AIRPORT.

Sec.

7-1101. Administration of Airport; definitions.

7-1102. Powers and duties of Administrator.

7-1103. Lease of space or property.

7-1104. Authority to make arrests; Park Police patrol.

Sec.

7-1105. Penalty.

7-1106. Deposit of collateral by person charged with violation.

7-1107. Agreements for municipal services.

§ 7-1101. Administration of Airport; definitions.

That for the purposes of this chapter:

(1) "Administrator" means the Administrator of the Federal Aviation Administration.

(2) "Airport" means the Washington National Airport, which shall consist of, and include, the tract of land, together with all structures, improvements, and other facilities located thereon, lying partly in the District of Columbia, and partly in the State of Virginia, particularly described as follows: Commencing at a point of beginning, said point being the intersection of the property line of property owned by the Richmond, Fredericksburg and Potomac Railroad Company, and dredging base line at station 0+18.99 referenced south 6,808.21, west 9,078.02, running in a southeasterly direction on a bearing of south 22°51'18" east a distance of 6,270.91 feet, more or less, to station 62+89.90 of said dredging base line. Thence 13°30' right on a bearing of south 9°21'18" east a distance of 1,332.29 feet, more or less, to station 76+22.19 of said base line. Thence 11°04'19" right on a bearing of south 1°43'01" west a distance of 1,231.20 feet, more or less, to station 88+53.39 of said base line. Thence 12°40'41" right on a bearing of south 14°23'42" west a distance of 2,409.32 feet, more or less, to station 112+62.71 on said base line. Thence 1°15'44.3" right on a bearing of south 15°39'26.3" west a distance of 4,938.38 feet, more or less, to United States Coast and Geodetic Survey Station WATER, referenced south 22,220.86, west 8,395.54. Thence 17°09'25.6" left on a bearing of south 1°29'59.3" east a distance of 85.58 feet, more or less, to a corner of the property line between the United States of America and Smoot Sand and Gravel Corporation. Thence 85°59'59.3" right on a bearing of south 84°30'00" west a distance of 1,516.41 feet, more or less, to a monument located at a corner on the property line of the Richmond, Fredericksburg and Potomac Railroad Company, said monument being referenced south 22,451.75, west 9,902.73. Thence 85°50'06.7" right on a bearing of north 8°09'54" west a distance of 442.68 feet, more or less. Thence 5°00'12" left on a bearing of north 13°10'06" west a distance of 578.64 feet, more or less. Thence 4°57'25" left on a bearing of north 18°07'31" west a distance of 462.94 feet, more or less. Thence 1°34'50" left on a bearing of north 19°42'21" west a distance of 943.56 feet, more or less, to the point of a curve having an angle of 27°52'45" right radius 1,241.15 feet, long chord 597.98 feet, on a bearing of north 5°45'58" west. Thence along the arc of said curve a distance of 603.92 feet, more or less, to the point of tangency of said curve. Thence along a tangent to said curve on a bearing of north 8°10'24" east a distance of 232.33 feet, more or less, to the point of a curve having an angle of 36°59'09" left, radius 1,046 feet, long chord

663.56 feet on a bearing of north $10^{\circ}19'10.5''$ west. Thence along the arc of said curve a distance of 675.22 feet, more or less, to the point of tangency of said curve. Thence along a tangent to said curve on a bearing of north $28^{\circ}48'45''$ west a distance of 256.75 feet, more or less. Thence $30^{\circ}33'10''$ left on a bearing of north $59^{\circ}21'55''$ west a distance of 287.84 feet, more or less. Thence $40^{\circ}45'20''$ right on a bearing of north $18^{\circ}36'35''$ west a distance of 1,142.08 feet, more or less. Thence $5^{\circ}43'29''$ right on a bearing of north $12^{\circ}53'06''$ west a distance of 118.02 feet, more or less, to the point of a curve having an angle of $26^{\circ}20'50''$ right, radius 3,665.71 feet, long chord 1,670.85 feet on a bearing of north $0^{\circ}17'19''$ east. Thence along the arc of said curve a distance of 1,685.66 feet, more or less, to the point of tangency of said curve. Thence along a tangent to said curve on a bearing of north $13^{\circ}27'44''$ east a distance of 2,002.11 feet, more or less, to the point of a curve having an angle of $10^{\circ}36'25''$ left, radius 2,864.79 feet, long chord of 529.59 feet on a bearing of north $8^{\circ}09'31.5''$ east. Thence along the arc of said curve a distance of 530.25 feet, more or less, to the point of tangency of said curve. Thence along a tangent to said curve on a bearing of north $2^{\circ}51'19''$ east a distance of 124.53 feet, more or less. Thence $6^{\circ}57'52''$ left on a bearing of north $4^{\circ}06'33''$ west a distance of 571.33 feet, more or less. Thence $7^{\circ}22'39''$ left on a bearing of north $11^{\circ}29'12''$ west a distance of 811.63 feet, more or less. Thence $8^{\circ}16'52''$ right on a bearing of north $3^{\circ}12'20''$ east a distance of 70.41 feet, more or less, to the point of a curve having an angle of $7^{\circ}43'12''$ right, radius 5,479.58 feet, long chord 737.75 feet on a bearing of north $7^{\circ}03'56''$ east. Thence along the arc of said curve a distance of 738.31 feet, more or less, to the point of tangency of said curve, said point being on the old property line between Mary E. Cullinane and Milton Hopfenmaier property. Thence along said property line on a bearing of north $75^{\circ}11'50''$ east a distance of 204.72 feet, more or less, to a monument marked U. S. D. 1-N. P. S., reference south 18,419.16, west 10,829.26. Thence along the same bearing of north $75^{\circ}11'50''$ east a distance of 215 feet, more or less. Thence $34^{\circ}36'06''$ left on a bearing of north $40^{\circ}35'44''$ east a distance of 1,509 feet, more or less, to the point of a curve having an angle of $5^{\circ}45'$ left, radius 7,239.41 feet, long chord of 723.20 feet, on a bearing of north $37^{\circ}53'14''$ east. Thence along the arc of said curve a distance of 726.51 feet, more or less, to the point of a compound curve having an angle of $6^{\circ}00'$ left, radius 2,217.01 feet, long chord of 232.06 feet on a bearing of north $32^{\circ}10'44''$ east. Thence along the arc of said curve a distance of 232.15 feet, more or less, to the point of a compound curve having an angle of $57^{\circ}01'20''$ left, radius 1,303.74, long chord 1,244.62, on a bearing of north $0^{\circ}40'04''$ east. Thence along the arc of said curve a distance of 1,297.22 feet, more or less, to the point of a compound curve having an angle of $7^{\circ}59'54.3''$ left, radius 2,217.01 feet, long chord 309.23 feet on a bearing of north $31^{\circ}49'33''$ west. Thence along the arc of said curve a distance of 310 feet, more or less, to the intersection of said curve with the property line of the Richmond, Fredericksburg and Potomac Railroad Company and the United States of America. Thence in a northeasterly direction along a bearing of north $34^{\circ}30'00''$ east a distance of 340 feet, more or less, to the point of beginning; excepting, however, such portion thereof as the President may, by executive order or orders, prescribe, which portion shall be added to, and administered

as part of, the Mount Vernon Memorial Highway, authorized by the Act approved May 23, 1928 (45 Stat. 721), as amended. (June 29, 1940, 54 Stat. 686, ch. 444, § 1; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, title XIV, § 1402(f); 1973 Ed., § 7-1301.)

Cross references. — As to exclusive jurisdiction of the United States in the Washington National Airport, see §§ 107 and 108 of the Act of October 31, 1945, 59 Stat. 552.

Metropolitan Washington Airports Authority established. — D.C. Law 6-67, effective December 3, 1985, endorsed on behalf of the District government the creation of a regional airport authority to acquire Washington National Airport and Washington Dulles International Airport from the federal government. D.C. Law 6-67 was amended by D.C. Law 7-18, effective July 25, 1987.

D.C. Law 6-67 was amended by D.C. Law 8-179, effective October 2, 1990.

D.C. Law 6-67 was temporarily amended by the District of Columbia Regional Airports Authority Act of 1985 Emergency Amendment Act of 1991 (D.C. Act 9-72, July 24, 1991, 38 DCR 4959) and by § 2 of the District of Columbia Regional Airports Authority Act of 1985 Congressional Recess Emergency Amendment Act of 1992 (D.C. Act 9-275, July 23, 1992, 39 DCR 5849).

D.C. Law 6-67 was amended, on a temporary basis, by § 2 of D.C. Law 9-48.

Section 4(b) of D.C. Law 9-48 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Regional Airports Authority Act of 1985 Amendment Act of 1991, whichever occurs first.

D.C. Law 8-179 was temporarily repealed by § 3 of the District of Columbia Regional Airports Authority Act of 1985 Emergency Amendment Act of 1991 (D.C. Act 9-72, July 24, 1991,

38 DCR 4959) and by § 3 of the District of Columbia Regional Airports Authority Act of 1985 Congressional Recess Emergency Amendment Act of 1992 (D.C. Act 9-275, July 23, 1992, 39 DCR 5849).

D.C. Law 8-179 was repealed, on a temporary basis, by § 3 of D.C. Law 9-48.

Section 4(b) of D.C. Law 9-48 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Regional Airports Authority Act of 1985 Amendment Act of 1991, whichever occurs first.

D.C. Law 6-67 was amended by D.C. Law 9-158, effective September 29, 1992.

D.C. Law 8-179 was repealed by § 3 of D.C. Law 9-158.

Transfer of functions. — The functions of the Administrator of the Federal Aviation Agency were transferred to the Secretary of Transportation by § 6(c)(1) of the Act of October 15, 1966, Pub. L. 89-670. The Federal Aviation Agency was abolished and a new Federal Aviation Administration in the Department of Transportation was created by §§ 3(e)(1) and 9(f) of that Act.

Strikes by airport employees prohibited. — The Virginia and D.C. statutes creating the airport authority also outlaw strikes by airport employees. *Metropolitan Wash. Airports Auth. Professional Fire Fighters Ass'n v. United States*, 959 F.2d 297 (D.C. Cir. 1992).

Cited in *Gebremariam v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 533 A.2d 909 (1987).

§ 7-1102. Powers and duties of Administrator.

The Administrator shall have control over, and responsibility for, the care, operation, maintenance, and protection of the airport, together with the power to make and amend such rules and regulations as he may deem necessary to the proper exercise thereof. (June 29, 1940, 54 Stat. 687, ch. 444, § 2; 1973 Ed., § 7-1302.)

Action by Administrator unconstitutional. — The action of the Administrator in prohibiting an operator of an automobile rental service from delivering driverless automobiles to customers at the Airport in any case where a

paper was to be signed or money was to be paid, even if the reservation had been made in advance, was arbitrary and capricious and unrelated to the proper administration of the Airport. *Friend v. Lee*, 221 F.2d 96 (D.C. Cir. 1955).

§ 7-1103. Lease of space or property.

The Administrator is empowered to lease, upon such terms as he may deem proper, space or property within or upon the airport for purposes essential or appropriate to the operation of the airport. (June 29, 1940, 54 Stat. 687, ch. 444, § 3; 1973 Ed., § 7-1303.)

Cross references. — As to lease of public buildings and property, see § 9-202.

§ 7-1104. Authority to make arrests; Park Police patrol.

(a) The Administrator, and any Federal Aviation Agency employee appointed to protect life and property on the airport, when designated by the Administrator, is hereby authorized and empowered:

(1) To arrest under a warrant within the limits of the airport any person accused of having committed within the boundaries of the airport any offense against the laws of the United States, or against any rule or regulation prescribed pursuant to this chapter;

(2) To arrest without warrant any person committing any such offense within the limits of the airport, in his presence;

(3) To arrest without warrant within the limits of the airport any person whom he has reasonable grounds to believe has committed a felony within the limits of the airport.

(b) Any individual having the power of arrest as provided in subsection (a) of this section may carry firearms or other weapons as the Administrator may direct or by regulation may prescribe.

(c) The United States Park Police may, at the request of the Administrator, be assigned by the Director of the National Park Service, in his discretion, subject to the supervision and direction of the Secretary of the Interior, to patrol any area of the airport, and any members of the United States Park Police so assigned are hereby authorized and empowered to make arrests within the limits of the airport for the same offenses, and in the same manner and circumstances, as is provided in this section with respect to employees designated by the Administrator. (June 29, 1940, ch. 444, § 4; as added May 15, 1947, 61 Stat. 94, ch. 62; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, title XIV, § 1402(f); 1973 Ed., § 7-1304.)

Cross references. — As to authority of Park Police to arrest on or within federal reservations in environs of District, see § 4-206.

As to arrest without warrant, see § 23-581.
Section references. — This section is referred to in § 7-1106.

§ 7-1105. Penalty.

Any person who knowingly and willfully violates any rule or regulation prescribed under this chapter shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500 or imprisoned not more than 6 months, or both. (June 29, 1940, ch. 444, § 5; as added May 15, 1947, 61 Stat. 94, ch. 62; 1973 Ed., § 7-1305.)

§ 7-1106. Deposit of collateral by person charged with violation.

The officer on duty in command of those employees designated by the Administrator as provided in § 7-1104, may accept deposit of collateral from any person charged with the violation of any rule or regulation prescribed under this chapter, for appearance in court or before the appropriate United States Magistrate; and such collateral shall be deposited with the United States Magistrate at Alexandria, Virginia. (June 29, 1940, ch. 444, § 6; as added May 15, 1947, 61 Stat. 94, ch. 62; 1973 Ed., § 7-1306.)

§ 7-1107. Agreements for municipal services.

The Administrator may enter into agreements with the State of Virginia, or with any political subdivision thereof, for such municipal services as the Administrator shall deem necessary to the proper and efficient government of the airport, and he may, from time to time, agree to modifications in any such agreement: Provided, however, that where the charge for any such service is established by the laws of the State of Virginia, the Administrator may not pay for such service an amount in excess of the charge so established. There is hereby authorized to be appropriated such sums as may be necessary for the making of payment for services under any such agreement. (June 29, 1940, ch. 444, § 7; as added May 15, 1947, 61 Stat. 95, ch. 62; 1973 Ed., § 7-1307.)

CHAPTER 12. DULLES INTERNATIONAL AIRPORT.

Sec.

- 7-1201. Construction and operation of Airport authorized.
- 7-1202. Selection of site.
- 7-1203. Acquisition and construction of facilities.
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Sec.

- 7-1208. Authority to make arrests; Park Police patrol.
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- 7-1210. Penalty.
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§ 7-1201. Construction and operation of Airport authorized.

The Administrator of the Federal Aviation Agency (hereinafter referred to as the "Administrator") is hereby authorized and directed to construct, protect, operate, improve, and maintain within or in the vicinity of the District of Columbia, a public airport (including all buildings and other structures necessary or desirable therefor). (Sept. 7, 1950, 64 Stat. 770, ch. 905, § 1; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, title XIV, § 1402(g); 1973 Ed., § 7-1401.)

Metropolitan Washington Airports Authority established. — D.C. Law 6-67, effective December 3, 1985, endorsed on behalf of the District government the creation of a regional airport authority to acquire Washington National Airport and Washington Dulles International Airport from the federal government. D.C. Law 6-67 was amended by D.C. Law 7-18, effective July 25, 1987.

D.C. Law 6-67 was amended by D.C. Law 8-179, effective October 2, 1990.

D.C. Law 6-67 was temporarily amended by the District of Columbia Regional Airports Authority Act of 1985 Emergency Amendment Act of 1991 (D.C. Act 9-72, July 24, 1991, 38 DCR 4959) and by § 2 of the District of Columbia Regional Airports Authority Act of 1985 Congressional Recess Emergency Amendment Act of 1992 (D.C. Act 9-275, July 23, 1992, 39 DCR 5849).

D.C. Law 6-67 was amended, on a temporary basis, by § 2 of D.C. Law 9-48.

Section 4(b) of D.C. Law 9-48 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Regional Airports Authority Act of 1985 Amendment Act of 1991, whichever occurs first.

D.C. Law 8-179 was temporarily repealed by § 3 of the District of Columbia Regional Airports Authority Act of 1985 Emergency Amendment Act of 1991 (D.C. Act 9-72, July 24, 1991,

38 DCR 4959) and by § 3 of the District of Columbia Regional Airports Authority Act of 1985 Congressional Recess Emergency Amendment Act of 1992 (D.C. Act 9-275, July 23, 1992, 39 DCR 5849).

D.C. Law 8-179 was repealed, on a temporary basis, by § 3 of D.C. Law 9-48.

Section 4(b) of D.C. Law 9-48 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Regional Airports Authority Act of 1985 Amendment Act of 1991, whichever occurs first.

D.C. Law 6-67 was amended by D.C. Law 9-158, effective September 29, 1992.

D.C. Law 8-179 was repealed by § 3 of D.C. Law 9-158.

Transfer of functions. — The functions of the Administrator of the Federal Aviation Agency were transferred to the Secretary of Transportation by § 6(c)(1) of the Act of October 15, 1966, Pub. L. 89-670. The Federal Aviation Agency was abolished and a new Federal Aviation Administration in the Department of Transportation was created by §§ 3(e)(1) and 9(f) of that Act.

Federal statute. — The Second Washington Airport Act is a federal statute and should not be considered a local District of Columbia statute. *Executive Limousine Serv., Inc. v. Adams*, 450 F. Supp. 579 (D.D.C. 1978).

§ 7-1202. Selection of site.

For the purpose of carrying out this chapter, the Administrator is authorized to acquire, by purchase, lease, condemnation, or otherwise (including transfer with or without compensation from federal agencies or the District of Columbia, or any state or political subdivision thereof), such lands and interests in lands and appurtenances thereto, including avigation easements or airspace rights, as may be necessary or desirable for the construction, maintenance, improvement, operation and protection of the airport: Provided, that before making commitments for the acquisition of land, or the transfer of any lands, the Administrator shall consult and advise with the National Capital Planning Commission as to the conformity of the proposed location with the Commission's comprehensive plan for the National Capital and its environs, and said Commission shall, upon request, submit a report and recommendations thereon within 30 days: Provided further, that the choice of site by the Administrator shall be made only after consultation with the governing body in the county in which the airport is to be located, with respect to the suitability of the site to be selected, and its possible impact on the vicinity. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 2; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, title XIV, § 1402(g); 1973 Ed., § 7-1402.)

§ 7-1203. Acquisition and construction of facilities.

(a) For the purposes of this chapter, the Administrator is empowered to acquire, by purchase, lease, condemnation, or otherwise (including transfer with or without compensation from federal agencies or the District of Columbia, or any state or political subdivision thereof), rights-of-way or easements for roads, trails, pipelines, power lines, railroad spurs, and other similar facilities necessary or desirable for the construction or proper operation of the airport.

(b) The Administrator is authorized to construct any streets, highways, or roadways (including bridges) as may be necessary to provide access to the airport from existing streets, highways, or roadways. Upon completion of construction of any street, highway, or roadway within the District of Columbia, such street, highway, or roadway shall be transferred to the District of Columbia without charge and thereafter shall be maintained by the District of Columbia. Upon construction of any street, highway, or roadway within a state or political subdivision thereof, such street, highway, or roadway may be transferred to such state or political subdivision thereof, without charge, on the condition that such street, highway, or roadway thereafter be maintained as a public street, highway, or roadway by such state or political subdivision thereof. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 3; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, title XIV, § 1402(g); 1973 Ed., § 7-1403.)

Suit premature for lack of "justiciable controversy." — Where none of the plaintiff's land was sought to be condemned, his suit to enjoin the taking of the property, more than a

one-half mile distance from his own land, for use as airport, did not present a "justiciable controversy," and his suit was premature. *Jasper v. Sawyer*, 205 F.2d 700 (D.C. Cir. 1953).

§ 7-1204. Maintenance and operation.

The Administrator shall have control over and responsibility for the care, operation, maintenance, improvements, and protection of the airport, together with the power to make and amend such rules and regulations as he may deem necessary to the proper exercise thereof: Provided, that the authority herein contained may be delegated by the Administrator to such official or officials of the Federal Aviation Agency as the Administrator may designate. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 4; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, title XIV, § 1402(g); 1973 Ed., § 7-1404.)

Congressional intent. — Congress, in creating the Washington Metropolitan Area Transit Commission (WMATC) and in specifically extending the WMATC's transportation authority to include Dulles Airport, intended that the WMATC regulate the transportation of passengers from the Airport. *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980).

Certification of additional carriers. — The Federal Aviation Administration (FAA) may appear before the Washington Metropolitan Area Transit Commission (WMATC) to oppose certification of additional carriers. However, under Congress' allocation of regulatory powers, the ultimate decision belongs to the WMATC, and the FAA may not render that decision nugatory by refusing to contract with a certified carrier. *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980).

Strikes by airport employees prohib-

ited. — The Virginia and D.C. statutes creating the airport authority also outlaw strikes by airport employees. *Metropolitan Wash. Airports Auth. Professional Fire Fighters Ass'n v. United States*, 959 F.2d 297 (D.C. Cir. 1992).

Regulation of ground transportation is not specifically one of the Federal Aviation Administration's responsibilities enumerated in this section. *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980).

It is for the Washington Metropolitan Area Transit Commission (WMATC) to certify the number of ground transportation carriers from Dulles that it thinks will best serve the public convenience and necessity. The Federal Aviation Administration (FAA) retains the authority to enter into contracts with certified carriers wishing to serve Dulles, but the FAA may not deny a contract to a WMATC-certified carrier. *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980).

§ 7-1205. Lease of space or property.

The Administrator is empowered to lease under such conditions as he may deem proper and for such periods as may be desirable space or property within or upon the airport for purposes essential or appropriate to the operation of the airport: Provided, that no lease for the use of any hangar or space therein shall extend for a period exceeding 3 years. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 5; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, title XIV, § 1402(g); 1973 Ed., § 7-1405.)

Section references. — This section is referred to in § 7-1206.

§ 7-1206. Contracts for supplies and services.

The Administrator is authorized to contract with any person for the furnishing of supplies or performance of services at or upon the airport necessary or desirable for the proper operation of the airport, including but not limited to, contracts for furnishing food and lodging, sale of aviation fuels, furnishing of aircraft repairs and other aeronautical services, and such other services and supplies as may be necessary or desirable for the traveling public.

No such contract, not including contracts involving the construction of permanent buildings or facilities, shall extend for a period of longer than 5 years, except the restaurant. The provisions of § 5 of Title 41, United States Code, shall not apply to contracts authorized under this section, to leases authorized under § 7-1205 hereof, or to contracts for architectural or engineering services necessary for the design and planning of the airport. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 6; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, title XIV, § 1402(g); 1973 Ed., § 7-1406.)

Congressional intent. — Congress, in creating the Washington Metropolitan Area Transit Commission (WMATC) and in specifically extending the WMATC's transportation authority to include Dulles Airport, intended that the WMATC regulate the transportation of passengers from the airport. *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980).

Certification of additional carriers. — The Federal Aviation Administration (FAA) may appear before the Washington Metropolitan Area Transit Commission (WMATC) to oppose certification of additional carriers. However, under Congress' allocation of regulatory powers, the ultimate decision belongs to the WMATC, and the FAA may not render that decision nugatory by refusing to contract with a certified carrier. *Executive Limousine Serv.,*

Inc. v. Goldschmidt, 628 F.2d 115 (D.C. Cir. 1980).

Regulation of ground transportation is not specifically one of the Federal Aviation Administration's responsibilities enumerated in this section. *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980).

It is for the Washington Metropolitan Area Transit Commission (WMATC) to certify the number of ground transportation carriers from Dulles that it thinks will best serve the public convenience and necessity. The Federal Aviation Administration (FAA) retains the authority to enter into contracts with certified carriers wishing to serve Dulles, but the FAA may not deny a contract to a WMATC-certified carrier. *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980).

§ 7-1207. Transfers of property by federal agencies.

Any executive department, independent establishment, or agency of the federal government or the District of Columbia, for the purposes of carrying out this chapter, is authorized to transfer to the Administrator, without compensation, upon his request, any lands, interests in lands (including avigation easements or airspace rights), buildings, property, or equipment under its control and in excess of its own requirements, which the Administrator may consider necessary or desirable for the construction, care, operation, maintenance, improvement, or protection of the airport. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 7; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, title XIV, § 1402(g); 1973 Ed., § 7-1407.)

§ 7-1208. Authority to make arrests; Park Police patrol.

(a) The Administrator and any Federal Aviation Agency employee appointed to protect life and property on the airport, when designated by the Administrator, is hereby authorized and empowered:

(1) To arrest under a warrant within the limits of the airport any person accused of having committed within the boundaries of the airport any offense against the laws of the United States, or against any rule or regulation prescribed pursuant to this chapter;

(2) To arrest without warrant any person committing any such offense within the limits of the airport, in his presence; or

(3) To arrest without warrant within the limits of the airport any person whom he has reasonable grounds to believe has committed a felony within the limits of the airport.

(b) Any individual having the power of arrest as provided in subsection (a) of this section may carry firearms or other weapons as the Administrator may direct or by regulation may prescribe.

(c) The United States Park Police may, at the request of the Administrator, be assigned by the Secretary of the Interior, in his discretion, to patrol any area of the airport, and any members of the United States Park Police so assigned are hereby authorized and empowered to make arrests within the limits of the airport for the same offenses and in the same manner and circumstances as are provided in this section with respect to employees designated by the Administrator.

(d) The officer on duty in command of those employees designated by the Administrator as provided in subsection (a) of this section may accept deposit of collateral from any person charged with the violation of any rule or regulation prescribed under this chapter, for appearance in court or before the appropriate United States Magistrate; and such collateral shall be deposited with such United States Magistrate. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 8; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, title XIV, § 1402(g); 1973 Ed., § 7-1408.)

Cross references. — As to authority of Park Police to arrest on or within federal reservation in environs of District, see § 4-206.

As to arrest without warrant, see § 23-581.

References in text. — The Act of October 17, 1968, Pub. L. 90-578, terminated the Office of United States Commissioner and established in place thereof the Office of United States Magistrate. The Act became operative in the District of Columbia on June 27, 1969, when 2

United States Magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969.

Arrest without warrant held invalid. — A motorist, who had received a summons from an officer to appear to answer a charge of a parking violation, could not be validly arrested for failure to post collateral without a warrant. *Craig v. Cox*, App. D.C., 171 A.2d 259 (1961), *aff'd*, 304 F.2d 954 (D.C. Cir. 1962).

§ 7-1209. Agreements for municipal services.

The Administrator may enter into agreements with the state, or any political subdivision thereof, in which the airport or any portion thereof is situated, for such state or municipal services as the Administrator shall deem necessary to the proper and efficient operation and protection of the airport, and he may, from time to time, agree to modifications in any such agreement: Provided, however, that where the charge for any such service is established by the laws of the state, the Administrator may not pay for such service in excess of the charge so established. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 9; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, title XIV, § 1402(g); 1973 Ed., § 7-1409.)

§ 7-1210. Penalty.

Any person who knowingly and willfully violates any rule, regulation, or order issued by the Administrator under this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$500 or to imprisonment not exceeding 6 months, or to both such

fine and imprisonment. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 10; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, title XIV, § 1402(g); 1973 Ed., § 7-1410.)

§ 7-1211. Definitions.

Unless the context otherwise requires, the definitions of the words and phrases used in this chapter shall be the definitions assigned to such words and phrases by the Civil Aeronautics Act of 1938, as amended. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 11; 1973 Ed., § 7-1411.)

References in text. — The Civil Aeronautics Act of 1938, as amended, referred to at the end of this section, formerly codified as 49 U.S.C. App. § 1301 et seq., has been repealed.

§ 7-1212. Appropriations authorized.

There is hereby authorized to be appropriated such sum as may be necessary for the construction of the airport authorized by this chapter, and such sum shall remain available until expended. There are hereby authorized to be appropriated such other sums as may be necessary to carry out the purposes of this chapter. (Sept. 7, 1950, 64 Stat. 773, ch. 905, § 12; July 11, 1958, 72 Stat. 354, Pub. L. 85-511, § 1; 1973 Ed., § 7-1412.)

§ 7-1213. Disposition of money recovered from pool and fountain.

Money hereafter recovered from the pool and fountain at Dulles International Airport shall not be subject to the Act of June 30, 1949, as amended (40 U.S.C. §§ 484 (m), 485 (a)), and may be given to a nonprofit organization which, in the determination of the Administrator of the Federal Aviation Agency, promotes and provides for the welfare of travelers in air commerce. (Aug. 30, 1964, 78 Stat. 646, Pub. L. 88-507, title I, § 101; 1973 Ed., § 7-1413.)

CHAPTER 13. POTOMAC RIVER BASIN COMPACT.

Sec.

7-1301. Consent of Congress to compact; rights reserved by Congress.

7-1302. Consent of Congress to amended com-

pact; authority of Mayor of the District of Columbia; rights reserved by Congress.

§ 7-1301. Consent of Congress to compact; rights reserved by Congress.

(a) The consent of Congress is hereby given to the States of Maryland and West Virginia and the Commonwealths of Virginia and Pennsylvania and the District of Columbia to enter into the compact to create a Potomac Valley Conservancy District and to establish an Interstate Commission on the Potomac River Basin, and to each and every part and article thereof: Provided, that nothing contained in such compact shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the region which forms the subject of this compact.

(b) The right to alter, amend, or repeal this section is hereby expressly reserved. (July 11, 1940, 54 Stat. 748, ch. 579; 1973 Ed., § 7-1501.)

§ 7-1302. Consent of Congress to amended compact; authority of Mayor of the District of Columbia; rights reserved by Congress.

(a) The consent of Congress is hereby given to the States of Maryland and West Virginia and the Commonwealths of Virginia and Pennsylvania and the District of Columbia to adopt and enter into the amended compact set forth in this section to create a Potomac Valley Conservancy District and to establish an Interstate Commission on the Potomac River Basin and every part and article thereof: Provided, that nothing contained in such amended compact shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the region which forms the subject of this compact: And provided further, that the consent herein given does not extend to § (F) (2) of Article II of the amended compact.

ARTICLE I

The Interstate Commission on the Potomac River Basin shall consist of three members from each signatory body and three members appointed by the President of the United States. Said Commissioners, other than those appointed by the President, shall be chosen in a manner and for the terms provided by law of the signatory body from which they are appointed and shall serve without compensation from the Commission but shall be paid by the Commission their actual expenses incurred and incident to the performance of their duties.

(A) The Commission shall meet and organize within thirty days after the effective date of this compact, shall elect from its number a chairman and vice-chairman, shall adopt suitable bylaws, shall make, adopt and promulgate

such rules and regulations as are necessary for its management and control, and shall adopt a seal.

(B) The Commission shall appoint and, at its pleasure, remove or discharge such officers and legal, engineering, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall determine their qualifications and fix their duties and compensation. Such personnel as may be employed shall be employed without regard to any civil service or other similar requirements for employees of any of the signatory bodies. The Commission may maintain one or more offices for the transaction of its business and may meet at any time or place within the area of the signatory bodies.

(C) The Commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report thereof and shall in such report set forth in detail the operations and transactions conducted by it pursuant to this compact. The Commission, however, shall not incur any obligations for administrative or other expenses prior to the making of appropriations adequate to meet the same nor shall in any way pledge the credit of any of the signatory bodies. Each of the signatory bodies reserves the right to make at any time an examination and audit of the accounts of the Commission.

(D) A quorum of the Commission shall, for the transaction of business, the exercise of any powers, or the performance of any duties, consist of at least six members of the Commission who shall represent at least a majority of the signatory bodies: Provided, however, that no action of the Commission relating to policy or stream classification or standards shall be binding on any one of the signatory bodies unless at least two of the Commissioners from such signatory body shall vote in favor thereof.

ARTICLE II

The Commission shall have the power:

(A) To collect, analyze, interpret, coordinate, tabulate, summarize and distribute technical and other data relative to, and to conduct studies, sponsor research and prepare reports on, pollution and other water problems of the Conservatory District.

(B) To cooperate with the legislative and administrative agencies of the signatory bodies, or the equivalent thereof, and with other commissions and Federal, local governmental and non-governmental agencies, organizations, groups and persons for the purpose of promoting uniform laws, rules or regulations for the abatement and control of pollution of streams and the utilization, conservation and development of the water and associated land resources in the said Conservancy District.

(C) To disseminate to the public information in relation to stream pollution problems and the utilization, conservation and development of the water and associated land resources of the Conservancy District and on the aims, views, purposes and recommendations of the Commission in relation thereto.

(D) To cooperate with, assist, and provide liaison for and among, public and non-public agencies and organizations concerned with pollution and other

water problems in the formulation and coordination of plans, programs and other activities relating to stream pollution or to the utilization, conservation or development of water or associated land resources, and to sponsor cooperative action in connection with the foregoing.

(E) In its discretion and at any time during or after the formulation thereof, to review and to comment upon any plan or program of any public or private agency or organization relating to stream pollution or the utilization, conservation or development of water or associated land resources.

(F)(1) To make, and, if needful from time to time, revise and recommend to the signatory bodies, reasonable minimum standards for the treatment of sewage and industrial or other wastes now discharged or to be discharged in the future to the streams of the Conservancy District, and also for cleanliness of the various streams in the Conservancy District.

(2) To establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use. It is agreed that each of the signatory bodies through appropriate agencies will prepare a classification of its interstate waters in the District in entirety or by portions according to present and proposed highest use, and for this purpose technical experts employed by appropriate state water pollution control agencies are authorized to confer on questions relating to classification of interstate waters affecting two or more states. Each signatory body agrees to submit its classification of its interstate waters to the Commission with its recommendations thereon.

The Commission shall review such classification and recommendations and accept or return the same with its comments. In the event of return, the signatory body will consider the comments of the Commission and resubmit the classification proposal, with or without amendment, with any additional comments for further action by the Commission.

It is agreed that after acceptance of such classification, the signatory body through its appropriate state water pollution control agencies will work to establish programs of treatment of sewage and industrial wastes which will meet or exceed standards established by the Commission for classified waters. The Commission may from time to time make such changes in definitions of classifications and in standards as may be required by changed conditions or as may be necessary for uniformity and in a manner similar to that in which these standards and classifications were originally established.

It is recognized, owing to such variable factors as location, size, character and flow and the many varied uses of the waters subject to the terms of this compact, that no single standard of sewage and waste treatment and no single standard of quality of receiving waters is practical and that the degree of treatment of sewage and industrial wastes should take into account the classification of the receiving waters according to present and proposed highest use, such as for drinking water supply, bathing and other recreational purposes, maintenance and propagation of fish life, industrial and agricultural uses, navigation and disposal of wastes.

ARTICLE III

For the purpose of dealing with the problems of pollution and of water and associated land resources in specific areas which directly affect two or more, but not all, signatory bodies, the Commission may establish Sections of the Commission consisting of the Commissioners from such affected signatory bodies: Provided, however, that no signatory body may be excluded from any Section in which it wishes to participate. The Commissioners appointed by the President of the United States may participate in any Section. The Commission shall designate, and from time to time may change, the geographical area with respect to which each Section shall function. Each Section shall, to such extent as the Commission may from time to time authorize, have authority to exercise and perform with respect to its designated geographical area any power or function vested in the Commission, and in addition may exercise such other powers and perform such functions as may be vested in such Section by the laws of any signatory body or by the laws of the United States. The exercise or performance by a Section of any power or function vested in the Commission may be financed by the Commission, but the exercise or performance of powers or functions vested solely in a Section shall be financed through funds provided in advance by the bodies, including the United States, participating in such Section.

ARTICLE IV

The moneys necessary to finance the Commission in the administration of its business in the Conservancy District shall be provided through appropriations from the signatory bodies and the United States, in the manner prescribed by the laws of the several signatory bodies and of the United States, and in amounts as follows:

The pro rata contributions shall be based on such factors as population; the amount of industrial and domestic pollution; and a flat service charge; as shall be determined from time to time by the Commission, subject, however, to the approval, ratification and appropriation of such contribution by the several signatory bodies.

ARTICLE V

Pursuant to the aims and purposes of this compact, the signatory bodies mutually agree:

1. Faithful cooperation in the abatement of existing pollution and the prevention of future pollution in the streams of the Conservancy District and in planning for the utilization, conservation and development of the water and associated land resources thereof.

2. The enactment of adequate and, insofar as is practicable, uniform legislation for the abatement and control of pollution and control and use of such streams.

3. The appropriations of biennial sums on the proportionate basis as set forth in Article IV.

ARTICLE VI

This compact shall become effective immediately after it shall have been ratified by the majority of the legislature of the States of Maryland and West Virginia, the Commonwealths of Pennsylvania and Virginia, and by the Commissioner of the District of Columbia, and approval by the Congress of the United States: Provided, however, that this compact shall not be effective as to any signatory body until ratified thereby.

ARTICLE VII

Any signatory body may, by legislative act, after one year's notice to the Commission, withdraw from this compact.

(b) The Mayor of the District of Columbia is authorized to enter into, on behalf of the District of Columbia, the amended compact hereinbefore recited.

(c) The right to alter, amend, or repeal this section is hereby expressly reserved. (Sept. 25, 1970, 84 Stat. 856, Pub. L. 91-407; 1973 Ed., § 7-1502.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 14. MISCELLANEOUS PROVISIONS.

Sec.	Sec.
7-1401. Jurisdiction over MacArthur Boulevard.	7-1421. Condemnation proceedings by railroad company.
7-1402. Railroads prohibited on certain streets.	7-1422. Company to pay portion of cost of paving or repairing streets.
7-1403. Further laying of street railroads prohibited.	7-1423. Use of track extensions by other carriers.
7-1404. Removal of paving stones; permit required; obstruction on streets.	7-1424. Right to alter, amend, or repeal §§ 7-1416 to 7-1424 reserved.
7-1405. Denomination of streets as "business streets."	7-1425. Construction of switch connections — Authorized.
7-1406. Portion of streets may be set aside as parks.	7-1426. Same — Plans to be approved by Mayor.
7-1407. Removal of obstructions from streets.	7-1427. Same — Grade crossings.
7-1408. Penalty for failure to replace paving stones.	7-1428. Same — Authority of Mayor not abridged.
7-1409. Improper appropriation or occupation of streets.	7-1429. Right to amend, alter or repeal §§ 7-1425 to 7-1429 reserved.
7-1410. Railroad sidings south of Virginia and Maryland Avenues authorized.	7-1430. Electrification of existing steam railroad lines.
7-1411. Railroad sidings into lots for business uses authorized.	7-1431. Submarine cables at drawbridge openings.
7-1412. Railroad tracks and additional stations authorized.	7-1432. Construction of electrical conduit systems authorized.
7-1413. Railroads may use Union Station and terminals.	7-1433. Jurisdiction of Department of Army, Mayor, and Interstate Commerce Commission not limited.
7-1414. Streets to be under or over railroad tracks.	7-1434. Liability of railroad companies for injuries.
7-1415. Subways and viaducts to eliminate grade crossings authorized.	7-1435. Employment of temporary special and technical employees.
7-1416. Track extensions for development of Buzzards Point authorized.	7-1436. Employment of temporary laborers and mechanics.
7-1417. Sale or lease of track connection with Navy Yard authorized.	7-1437. Employment of horses, horse-drawn vehicles, and motortrucks.
7-1418. Branch tracks, spurs, or sidings authorized.	7-1438. Employment of personnel and equipment to execute work payable from miscellaneous trust fund deposits.
7-1419. Extensions through public grounds authorized.	7-1439. Helicopter landing pads.
7-1420. Authority of Mayor under § 7-1415 not affected.	

§ 7-1401. Jurisdiction over MacArthur Boulevard.

Jurisdiction and control over MacArthur Boulevard for its full width in the District of Columbia between Foxhall Road and the District line, excepting a strip 19 feet wide within the lines of said road, the center of which is coincident with the center of the water supply conduit, is hereby transferred from the Secretary of the Army to the Council of the District of Columbia, and property abutting thereon shall be subject to any and all lawful assessments which may be levied by the said Council for public improvements, the same as other private property in the District of Columbia: Provided, that all municipal laws and regulations shall apply to the entire width of the said road in the District of Columbia in the same degree that they apply to other streets and highways in the said District. (May 22, 1926, 44 Stat. 627, ch. 372; Mar. 4, 1942, 56 Stat. 123, ch. 129; 1973 Ed., § 7-1201.)

Cross references. — As to jurisdiction and control over public roadways, see § 7-102.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(172) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1402. Railroads prohibited on certain streets.

All railroads are prohibited on the I Street and K Street fronts of Farragut, Scott, and Franklin Squares. (R.S., D.C., § 223; 1973 Ed., § 7-1202.)

§ 7-1403. Further laying of street railroads prohibited.

No further street railroads shall be laid down in the City of Washington without the consent of Congress. (R.S., D.C., § 224; 1973 Ed., § 7-1203.)

§ 7-1404. Removal of paving stones; permit required; obstruction on streets.

Whenever any person desires to remove the paving stones, or to displace any other work done by the authority of the United States, for the purpose of laying gas pipes, or for any other purpose, it shall be the duty of such person to obtain a written permit from the Director of the National Park Service, and such person shall oblige themselves to replace the said work to the satisfaction of said officer, and within such time as he may prescribe. If any person shall place any obstruction on the streets, avenues, or sidewalks, so improved by the United States, such person shall pay the costs of removing the same, and shall be subject to a penalty of \$10, to be recovered as other debts are recovered in said District, for each and every day the obstruction may remain after the Director of the National Park Service shall have given notice for its removal. (R.S., D.C., §§ 228, 229; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; 1973 Ed., § 7-1204.)

Cross references. — As to powers of federal government over public highways, see §§ 7-1407 to 7-1410 and 7-1419.

As to laying water mains and sewers, see § 43-1501 et seq.

§ 7-1405. Denomination of streets as “business streets.”

The Council of the District of Columbia is authorized and directed to denominate portions of streets in the District of Columbia as “business streets” and to authorize the use, on such portions of streets, for business purposes by abutting property owners, under such general regulations as said Council may prescribe, of so much of the sidewalk and parking as may not be needed, in the

judgment of said Council, by the general public, under the following conditions, namely:

(1) Wherein a portion of a street not already denominated a business street a majority of a frontage not less than 3 blocks in length is occupied and used for business purposes; and

(2) Where a portion of a street has already been denominated a business street, and there exists adjoining such portion a block or more whose frontage is occupied and used for business purposes. (Feb. 2, 1904, 33 Stat. 10, ch. 89; 1973 Ed., § 7-1205.)

Cross references. — As to enforcement of rules and regulations for protection of life, health, and property, see §§ 1-315 and 1-319.

As to jurisdiction and control over public roads, see § 7-102.

As to rental of public space, see §§ 7-1001 to 7-1010.

As to authority to regulate parking, see § 40-703.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(173) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Council is not vested with power to prohibit street sales under this section. *Crane v. District of Columbia*, 289 F. 557 (D.C. Cir. 1923).

§ 7-1406. Portion of streets may be set aside as parks.

The proper authorities of the District are authorized to set apart from time to time, as parks, to be adorned with shade trees, walks, and inclosed with curbstones, not exceeding one-half the width of any and all avenues and streets in the said City of Washington, except Pennsylvania Avenue, leaving a roadway of not less than 35 feet in width in the center of said avenues and streets or 2 such roadways on each side of the park in the center of the same; but such inclosures shall not be used for private purposes. (R.S., D.C., § 225; Mar. 3, 1881, 21 Stat. 462, ch. 134; 1973 Ed., § 7-1206.)

§ 7-1407. Removal of obstructions from streets.

It shall be the duty of the Director of the National Park Service to cause obstructions of every kind to be removed from such streets, avenues, and sidewalks in the City of Washington as have been, or may be, improved in whole or in part by the United States, and to keep the same, at all times, free from obstructions. For the purpose of carrying out the provisions of this section, the Director of the National Park Service shall have power to institute suits in any court having competent jurisdiction, and it shall be the duty of the United States Attorney for the District to prosecute the same. (R.S., D.C., §§ 226, 227; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; 1973 Ed., § 7-1207.)

Cross references. — As to jurisdiction and control of public ways, see § 7-102.

District has primary responsibility for maintaining streets and sidewalks in reasonably safe condition, regardless of who owns the fee in such streets and sidewalks, in the

absence of special circumstances such as the accumulation of snow or ice or the improvement of the way in question by the United States. *Conner v. United States*, 309 F. Supp. 446 (D.D.C. 1970).

§ 7-1408. Penalty for failure to replace paving stones.

If any person removing the paving stones or other work done by the authority of the United States shall fail to replace the same to the satisfaction of the Director of the National Park Service, within the time prescribed by him, he shall be subject to a penalty of \$25 for each and every failure, and shall pay the costs of replacing the same, the whole to be recovered before any court in said District having competent jurisdiction. (R.S., D.C., § 230; 1973 Ed., § 7-1208.)

District has primary responsibility for maintaining streets and sidewalks in reasonably safe condition, regardless of who owns the fee in such streets and sidewalks, in ab-

sence of special circumstances such as accumulation of snow or ice or improvement of the way in question by the United States. *Conner v. United States*, 309 F. Supp. 446 (D.D.C. 1970).

§ 7-1409. Improper appropriation or occupation of streets.

The Secretary of the Interior is directed to prevent the improper appropriation or occupation of any of the public streets, avenues, squares, or reservations in the City of Washington, belonging to the United States, and to reclaim the same if unlawfully appropriated; and particularly to prevent the erection of any permanent building upon any property reserved to or for the use of the United States, unless plainly authorized by act of Congress, and to report to Congress at the commencement of each session his proceedings in the premises, together with a full statement of all such property, and how, and by what authority, the same is occupied or claimed. Nothing herein contained shall be construed to interfere with the temporary and proper occupation of any portion of such property, by lawful authority, for the legitimate purposes of the United States. (R.S., § 1818; 1973 Ed., § 7-1209.)

§ 7-1410. Railroad sidings south of Virginia and Maryland Avenues authorized.

It shall be the duty of the Council of the District of Columbia, and it is hereby authorized and empowered, whenever it considers it a public benefit, to grant the Baltimore and Potomac Railroad Company permission to lay, maintain, and use sidetracks and sidings from the main line or lines of said railroad into any real estate in the said city abutting on the streets or avenues on which such line of such company is or may be situated, east of Four-and-a-half Street and south of Virginia and Maryland Avenues, which may be used or occupied for manufacturing, commercial, or other business purposes by parties desiring the use of such facilities. Such sidetracks or sidings shall be laid and maintained under the direction of the Mayor of the District of Columbia and in

such manner as shall least obstruct the use of the public streets for ordinary purposes: Provided, that the right to revoke the use of said sidetracks or sidings is reserved to Congress. (Jan. 19, 1891, 26 Stat. 719, ch. 76, § 2; 1973 Ed., § 7-1210.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(174) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1411. Railroad sidings into lots for business uses authorized.

It shall be lawful for the Baltimore and Potomac Railroad Company to extend and construct, from time to time, branch tracks or sidings from the lines of railroad authorized hereunder, into any lot or lots adjacent to any street or avenue along which said lines of railroad are located, upon the application of the owner or owners of such lot or lots, to enable such owners to use their property for the purpose of coal, wood, or lumber yards, manufactories, warehouses, and other business enterprises: Provided, however, that no grade crossing of any street or avenue within the City of Washington shall be thereby created, but such connecting tracks shall be carried across such street or avenue in such manner as not to obstruct the free use thereof, and the plans of such connecting tracks shall in every case be first filed with and approved by the Mayor of the District of Columbia. (Feb. 12, 1901, 31 Stat. 772, ch. 353, § 10; 1973 Ed., § 7-1211.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1412. Railroad tracks and additional stations authorized.

In addition to the main or terminal station or depot, the Baltimore and Ohio Railroad Company, or the Washington Terminal Company may from time to

time construct, establish, and maintain such additional stations or depots, for passengers or freight, as the company may deem necessary or useful in the conduct of its business, or for the accommodation of the freight and passenger traffic passing over the lines of railroad authorized by this Act, at such point or points within said District as the Council of the District of Columbia shall approve: Provided, that no such station or depot within the city limits shall be located east of 2nd Street east, and west of North Capitol Street, and it shall be lawful for either of said companies to acquire, by gift, purchase, or condemnation, any land adjacent to any street or avenue along or upon which the lines of railroad and works hereby authorized shall be located, and hold and improve the same in such manner as it may deem necessary or beneficial to accommodate or promote the traffic on said railroad, and to extend and construct tracks of railroad into and upon any lands so acquired and connect the same with the tracks on such adjacent street or avenue: Provided, however, that no grade crossing of any street or avenue within the City of Washington shall be thereby created, but such connecting tracks shall be elevated and carried over the portion of such street or avenue crossed in such manner as not to obstruct the free use thereof, and the plans of such connecting tracks and elevated structure shall in every case be first filed with and approved by the Council of the District of Columbia. And it shall be lawful for said companies, or either of them, subject to the same conditions and restrictions, to extend and construct, from time to time, branch tracks or sidings from the lines of railroad authorized hereunder into any lot or lots adjacent to any street or avenue along which said lines of railroad are located, upon the application of the owner or owners of such lot or lots, to enable such owners to use their property for the purposes of coal, wood, or lumber yards, manufactories, warehouses, and other business enterprises. (Feb. 12, 1901, 31 Stat. 777, ch. 354, § 5; 1973 Ed., § 7-1212.)

References in text. — This Act, referred to in the first sentence of this section, means the Act of February 12, 1901, 31 Stat. 777, ch. 354.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(175) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the Dis-

trict of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Private nuisance. — Although a tunnel constructed under the authority of an act of Congress cannot be deemed a public nuisance, it may be a private nuisance which would entitle the property owner to damages. *Richards v. Washington Term. Co.*, 233 U.S. 546, 34 S. Ct. 654, 58 L. Ed. 1088 (1914).

Cited in *Winslow v. B & O R.R.*, 208 U.S. 59, 28 S. Ct. 190, 52 L. Ed. 388 (1908).

§ 7-1413. Railroads may use Union Station and terminals.

Any railroad company lawfully existing and authorized to extend a line of railroad into the District of Columbia, or having secured the right to operate over the lines of any other then existing railroad, to a point of connection with the tracks of the Washington Terminal Company, shall have the right to the joint use of said station and terminals authorized in the Act approved February 28, 1903 (32 Stat. 909), upon the payment of a reasonable compensation for the use of the same; and if the parties be unable to agree upon such terms, then the same shall be prescribed by the United States District Court for the District of Columbia, upon petition of either party in interest, under such rules of procedure as the said Court shall prescribe. (Feb. 28, 1903, 32 Stat. 918, ch. 856, § 11; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 109, ch. 139, § 127; 1973 Ed., § 7-1213.)

Cross references. — As to joint use of utility facilities, see § 43-502.

Compensation for tunnel construction. — A property owner was entitled to compensation for damages specially affecting his prop-

erty as a result of tunnel construction. *Richards v. Washington Term. Co.*, 233 U.S. 546, 34 S. Ct. 654, 58 L. Ed. 1088 (1914).

Cited in *Millard v. Roberts*, 202 U.S. 429, 26 S. Ct. 674, 50 L. Ed. 1090 (1906).

§ 7-1414. Streets to be under or over railroad tracks.

(a) Any and all streets or highways within the District of Columbia now or hereafter planned or projected to cross any line of railroad, other than a street railway, in the District of Columbia, which may be hereafter opened to public use, shall be located, constructed, and maintained either beneath such railroad by a suitable subway, or above the same by a suitable viaduct bridge at such altitude as will not interfere with the free and safe operation thereof: Provided, however, that nothing herein contained shall require the location, construction, or maintenance of any such street or highway under or above any spur, industrial, switching or sidetrack, or branch line of any railroad unless the Mayor of the District of Columbia shall find the same is necessary in the public safety.

(b) The cost and expense of any project for opening any such street or highway within the limits of such railroad company's right-of-way, including the cost of constructing the portion of any viaduct bridge, within said limits, shall be borne and paid as follows:

(1) The District of Columbia shall apply to the payment of such cost and expense all federal-aid highway-railway grade separation funds available for use by the District of Columbia at the time any such project is programmed and all such funds which become available for use on such projects by the District of Columbia during the construction of such project;

(2) If such federal-aid highway-railway grade separation funds are insufficient to pay the cost and expense of any such project, the portion not so covered shall be paid one-half by the railroad company, its successors and assigns, whose tracks are crossed and one-half by the District of Columbia: Provided, that in no case shall the obligation of the railroad company affected exceed 10 per centum of the total cost and expense of such project;

(3) After construction, the cost of maintenance shall be wholly borne and paid in the case of highway overpasses by the District of Columbia, and in the case of highway underpasses by the railroad company, its successors and assigns, whose tracks are crossed; and

(4) The portions of such streets planned or projected as above which lie within a right-of-way belonging to such railroad company shall be dedicated by such company as a public thoroughfare when the portions of such street adjoining such right-of-way have been similarly dedicated or otherwise acquired. (Feb. 28, 1903, 32 Stat. 918, ch. 856, § 10; May 9, 1941, 55 Stat. 182, ch. 93, § 1; July 25, 1956, 70 Stat. 638, ch. 720, § 1; 1973 Ed., § 7-1214.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1415. Subways and viaducts to eliminate grade crossings authorized.

(a) The Mayor of the District of Columbia be, and he is hereby, authorized and directed to construct viaducts and approaches thereto, to carry Fern and Varnum Streets over the tracks and right-of-way of the Baltimore and Ohio Railroad Company and to construct a viaduct and approaches thereto to carry Eastern Avenue over the tracks and rights-of-way of The Philadelphia, Baltimore, and Washington Railroad Company and the Baltimore and Ohio Railroad Company, in accordance with plans and profiles of said works to be approved by the said Mayor: Provided, that one-half of the total cost of constructing the viaduct and approaches thereto at Varnum Street and one-half of the total cost of constructing the viaduct and approaches thereto at Fern Street shall be borne and paid by the said Baltimore and Ohio Railroad Company, its successors and assigns, and that one-half of the total cost of constructing the viaduct and approaches thereto at Eastern Avenue shall be borne and paid by the said Philadelphia, Baltimore and Washington Railroad Company and the said Baltimore and Ohio Railroad Company, their successors and assigns, in proportion to the widths of their respective land holdings, to the Collector of Taxes of the District of Columbia for deposit to the credit of the District of Columbia, and the said half cost shall be valid and subsisting liens against the franchises and property of the railroad companies concerned and shall constitute a legal indebtedness against the said railroad companies in favor of the District of Columbia, and said liens may be enforced in the name of the District of Columbia by a bill in equity brought by the said Mayor in the Superior Court of the District of Columbia, or by any other legal proceeding against the said railroad companies: Provided, that no street railway company

shall use the said viaduct or any approaches thereto herein authorized for its tracks until said companies shall have paid to the Collector of Taxes of the District of Columbia, a sum equal to one-fourth of the total cost of constructing said viaducts and approaches, to be applied to the credit of the District of Columbia. No limitation shall run against claims made by the District of Columbia under the provisions of this section.

(b) For the purpose of carrying into effect the provisions of this section, the sum of \$405,000 is hereby authorized to be appropriated, payable in like manner as other appropriations, for the expenses of the government of the District of Columbia, and the said Mayor is authorized to expend such sum or sums as may be necessary for personal services, engineering, and incidental expenses. The said Mayor is further authorized to acquire, out of the appropriation herein authorized, the necessary land, or any portion of the same, by purchase at such price or prices as in his judgment he may deem reasonable and fair, or, in his discretion, by condemnation in accordance with the provisions of §§ 7-202 to 7-214, under a proceeding or proceedings in rem instituted in the Superior Court of the District of Columbia: Provided, that of the entire amount found to be due and awarded by the jury as damages for, and in respect of, the land to be condemned to carry the provisions of this section into effect, plus the costs and expenses of the proceeding or proceedings taken pursuant hereto, not less than one-half thereof shall be assessed by the jury as benefits, the amounts collected as benefits to be covered into the Treasury of the United States to the credit of the District of Columbia.

(c) Hereafter, the Mayor of the District of Columbia is authorized, whenever in his judgment it may be necessary for the public safety, and subject to appropriations to be made therefor by Congress, to construct subways or viaducts and approaches thereto, in accordance with plans and profiles of said works to be approved by him, to carry any street or highway crossing at grade any line of railroad track or tracks in the District of Columbia, or any street or highway within the District of Columbia now or hereafter planned or projected to cross any such line of railroad, under or over said track or tracks: Provided, that the total cost of constructing any project for such viaduct or subway and approaches thereto shall be borne and paid as follows:

(1) The District of Columbia shall apply to the payment of the cost of such project all federal-aid highway-railway grade separation funds available for use by the District of Columbia at the time any such project is programmed and all such funds which become available for use on such project by the District of Columbia during the construction of such projects; and

(2) If such federal-aid highway-railway grade separation funds are insufficient to pay the cost of any such project, the portion not so covered shall be paid one-half by the railroad company, its successors and assigns, whose tracks are crossed and one-half by the District of Columbia: Provided further, that in no case shall the obligation of the railroad company affected exceed 10 per centum of the total cost of such project: Provided further, that in the event the rights-of-way of 2 or more railroad companies are so crossed said half cost as herein provided shall be paid by the said railroad companies, their successors and assigns, in proportion to the widths of their respective landholdings, but

the obligations of such companies shall not, in the aggregate, exceed 10 per centum of the cost of such project: Provided further, that after construction the cost of maintenance shall be wholly borne and paid in the case of highway overpasses by the District of Columbia, and in the case of highway underpasses by the railroad company, its successors and assigns, whose tracks are crossed: Provided further, that in the event the rights-of-way of 2 or more railroad companies are so crossed, the cost of maintenance shall be borne and paid in the case of highway underpasses by the said railroad companies, their successors and assigns, in proportion to the widths of their respective land-holdings. All provisions in respect to the method of payment and credit of said half cost, creation of a lien in respect thereto and enforcement thereof, conditions of use thereof by street railway companies, and every other kind of condition provided in subsection (a) of this section, and the authorization and every condition in respect thereto for the acquisition of any necessary land provided in subsection (b) of this section, in relation to the viaducts and their approaches therein authorized, are hereby made applicable to the subways, viaducts, and approaches authorized in this section the same as if enacted at length herein. (Mar. 3, 1927, 44 Stat. 1353, ch. 306, §§ 1-3; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 25, 1956, 70 Stat. 639, ch. 720, § 2; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(28); 1973 Ed., § 7-1215.)

Cross references. — As to condemnation proceedings, see § 16-1301 et seq.

Section references. — This section is referred to in §§ 7-1420 and 7-1428.

References in text. — “Sections 7-202 to 7-214,” referred to in the second sentence of subsection (b), have been repealed by § 704 of D.C. Law 7-201, effective March 10, 1983 and by § 16 of D.C. Law 5-24, effective August 2, 1983.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. —

The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The exec-

utive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and

Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

§ 7-1416. Track extensions for development of Buzzards Point authorized.

The Philadelphia, Baltimore and Washington Railroad Company is hereby authorized to establish a switch connection with an existing track in its New Jersey Avenue yard, at a point north of the north curb line of I Street Southeast; thence southward on 1st Street Southeast to and connecting with the existing track on 1st Street Southeast at or about N Street, with a switch connection at or about Quander Street and spur track running over, across, and through square 743 to and into the United States Navy Yard; thence southward on 1st Street Southeast to and thence along Potomac Avenue to the west line of 2nd Street Southwest, with all necessary switches, extensions, turnouts, and sidings and such other track extensions through and along One-half Street Southwest, and 2nd Street Southwest, south of Potomac Avenue and north of Potomac Avenue to P Street, and One-half Street Southeast, south of Potomac Avenue and north of Potomac Avenue to O Street, as may be or become necessary for the establishment of adequate railroad facilities in connection with the development of Buzzards Point as an industrial area in the District of Columbia. (June 18, 1932, 47 Stat. 322, ch. 269, § 1; June 20, 1939, 53 Stat. 849, ch. 229; June 5, 1942, 56 Stat. 326, ch. 353; 1973 Ed., § 7-1216.)

Cross references. — As to joint use of utility facilities, see §§ 7-1423 and 43-502.
As to taxation, see §§ 47-836 and 47-837.

Section references. — This section is referred to in §§ 7-1419 to 7-1421, 7-1423, and 7-1424.

§ 7-1417. Sale or lease of track connection with Navy Yard authorized.

The Secretary of the Navy is authorized to sell and transfer or to lease to The Philadelphia, Baltimore, and Washington Railroad Company, its successors and/or assigns, upon such terms and for such amount as he may deem to be both just and reasonable, the existing railroad track connection with the United States Navy Yard as constructed and established under authority conferred by an Act of Congress approved August 29, 1916, entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1917, and for other purposes": Provided, that the title to any right of way or property provided by the United States for the purposes of such construction and occupied by said track connection on June 18, 1932, shall remain in the United States: And provided further, that said track connection, insofar as the requirements of the United States Navy Yard may be affected, at all times shall be maintained and operated by said railroad company, its successors or

assigns, to the satisfaction of the Secretary of the Navy. (June 18, 1932, 47 Stat. 322, ch. 269, § 2; 1973 Ed., § 7-1217.)

Section references. — This section is referred to in §§ 7-1419 to 7-1421, 7-1423, and 7-1424.

References in text. — The Act approved

August 29, 1916, referred to near the middle of this section, means the Act of August 29, 1916, 39 Stat. 556, ch. 417.

§ 7-1418. Branch tracks, spurs, or sidings authorized.

Said railroad company is hereby authorized to construct, maintain, and operate branch tracks, spurs, or sidings into any lot or square zoned or thereafter zoned for industrial or 2nd commercial use abutting upon any street or avenue over and along which said railroad company is hereby specifically authorized to lay and operate tracks, and also to construct tracks to serve any wharf which may be established on the Anacostia River: Provided, that the construction of all such railroad tracks and appurtenant turnouts, branch tracks, and sidings, in all respects and things, shall be subject to the prior approval of the Council of the District of Columbia after report by the National Capital Planning Commission, such approval to be noted upon identical copies of a suitably prepared plat or chart, 1 copy to be kept on file in the Office of the Mayor of the District of Columbia and the other thereof to be kept on file in the office of the National Capital Planning Commission. (June 18, 1932, 47 Stat. 322, ch. 269, § 3; 1973 Ed., § 7-1218.)

Section references. — This section is referred to in §§ 7-1419 to 7-1421, 7-1423, and 7-1424.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(176) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818,

§ 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

§ 7-1419. Extensions through public grounds authorized.

Subject always to the approval of the Council of the District of Columbia, all such railroad tracks, turnouts, branch tracks, spurs, and sidings may be located and constructed in, upon, along, and through public grounds, space, and streets of the United States and/or of the District of Columbia as same are now or may hereafter be located and established: Provided, that except as in §§ 7-1416 to 7-1424 expressly authorized no tracks, turnouts, branches, spurs, or sidings shall be constructed along or through South Capitol Street or 1st Street Southwest in the north and south direction, at grade or otherwise, but

each of said streets, with prior approval of said Council of the District of Columbia, may be crossed to such extent as may be necessary for the establishment of adequate railroad facilities: Provided further, that no permit for the construction of tracks, turnouts, branches, spurs, or sidings shall be issued with respect to squares 600, 602, 604, 606, 608, 610, and 612, or any of said squares, until the particular square or squares for which a permit is sought shall have been zoned industrial: And provided further, that the plans for any building fronting on Canal Street from the Anacostia River to P Street Southwest shall have the approval of the Fine Arts Commission as to height and design. (June 18, 1932, 47 Stat. 323, ch. 269, § 4; 1973 Ed., § 7-1219.)

Section references. — This section is referred to in §§ 7-1420 to 7-1421, 7-1423, and 7-1424.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(177) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1420. Authority of Mayor under § 7-1415 not affected.

Nothing contained in §§ 7-1416 to 7-1424 shall be construed as limiting or abridging the authority of the Mayor of the District of Columbia under § 7-1415. (June 18, 1932, 47 Stat. 323, ch. 269, § 5; 1973 Ed., § 7-1220.)

Section references. — This section is referred to in §§ 7-1419, 7-1421, 7-1423, and 7-1424.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1421. Condemnation proceedings by railroad company.

The Philadelphia, Baltimore, and Washington Railroad Company, its successors or assigns, is authorized to acquire any land or property other than public grounds, space, or streets of the United States or the District of Columbia necessary or expedient for right-of-way for said track extensions, turnouts, branch tracks, spurs, sidings, and connections by purchase or condemnation. In event that said company, its successors or assigns, shall be

unable to acquire any piece or parcel of land necessary or expedient for any of the purposes indicated in §§ 7-1416 to 7-1424, at a price deemed by it to be reasonable, then, and in such event The Philadelphia, Baltimore, and Washington Railroad Company, its successors and assigns, is authorized to acquire the same by condemnation proceedings to be instituted in its own name by petition filed in the United States District Court for the District of Columbia for the ascertainment of its value, in accordance with the provisions of §§ 16-1301 and 16-1311 to 16-1321. (June 18, 1932, 47 Stat. 323, ch. 269, § 6; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; 1973 Ed., § 7-1221.)

Cross references. — As to condemnation proceedings, see § 16-1301 et seq.

ferred to in §§ 7-1419 to 7-1420, 7-1423, and 7-1424.

Section references. — This section is re-

§ 7-1422. Company to pay portion of cost of paving or repairing streets.

If and when the Mayor of the District of Columbia shall decide to pave or repave any of the streets over or along which tracks are authorized to be constructed, the railroad company shall be required to bear the expense of the paving and/or repairs to pavements between the rails and on either side of the tracks for a distance of 2 feet. (June 18, 1932, 47 Stat. 323, ch. 269, § 7; 1973 Ed., § 7-1222.)

Section references. — This section is referred to in §§ 7-1419 to 7-1421, 7-1423, and 7-1424.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1423. Use of track extensions by other carriers.

The authority to establish, construct, acquire, maintain, and operate the tracks, switch connections, extensions, turnouts, sidings, branches, spurs, and other facilities provided for in §§ 7-1416 to 7-1424 is given upon the following conditions, to wit: The said facilities shall be open to any and all freight traffic by rail whether originating within or without the District of Columbia either on the said The Philadelphia, Baltimore, and Washington Railroad Company or any other common carrier railroad, upon such just, reasonable, and nondiscriminatory rates, terms, and conditions as may be embraced in public tariffs, subject to the jurisdiction of the Interstate Commerce Commission as provided for other rates under the provisions of the Interstate Commerce Act: Provided, that no greater charge shall be made for deliveries to be made upon

said facilities than is or are or may be made for delivery of like traffic consigned for delivery at any other delivery point on The Philadelphia, Baltimore, and Washington Railroad Company in the District of Columbia; special, free, or reduced rates or charges for deliveries of property consigned to the United States or any of its departments, bureaus, or subordinate branches or to or for use of the municipality of the District of Columbia not included: And provided further, that any common carrier by railroad now or hereafter authorized to operate in the District of Columbia shall, upon application to and approval by the Interstate Commerce Commission, be permitted to use jointly all such facilities as provided in §§ 7-1416 to 7-1424 on such terms and for such compensation as may be prescribed by the said Interstate Commerce Commission in accordance with the provisions of the Interstate Commerce Act, as amended. (June 18, 1932, 47 Stat. 324, ch. 269, § 8; 1973 Ed., § 7-1223.)

Section references. — This section is referred to in §§ 7-1419 to 7-1421, and 7-1424.

References in text. — The Interstate Com

merce Act, referred to throughout this section, is codified throughout Chapters 1, 8, 12, 13 and 19 of Title 49, United States Code.

§ 7-1424. Right to alter, amend, or repeal §§ 7-1416 to 7-1424 reserved.

The right to alter, amend, or repeal §§ 7-1416 to 7-1424 is reserved without regard to any payments required or agreements established under their terms. (June 18, 1932, 47 Stat. 324, ch. 269, § 9; 1973 Ed., § 1224.)

Section references. — This section is referred to in §§ 7-1419 to 7-1421 and 7-1423.

§ 7-1425. Construction of switch connections — Authorized.

The Pennsylvania Railroad Company, operating lessee of all of the railroads and appurtenant properties of The Philadelphia, Baltimore, and Washington Railroad Company in the District of Columbia, be, and it is hereby, authorized to establish switch and siding connections with its existing siding tracks in square no. 4263 (also shown as parcel 154/44) to cross West Virginia Avenue into and through square no. 4105 along and adjacent to the existing main line tracks, thence into and through square nos. 4104 and 4099, crossing New York Avenue by means of a suitable overhead bridge, thence to and through square no. 4099 and the parcels of land known and identified on the Plat Books of the Surveyor's Office of the District of Columbia as parcels 153/44, 143/25, 142/25, and 142/28, to and through the square known as and no. 4038 (portions of which are included in parcel 142/28), 4093, south of 4093, and 4098, with all switches, crossings, turnouts, extensions, spurs, and sidings, as may be or become necessary for the development of the squares and parcels of land above indicated for such uses as may be permitted in the use district or districts in which said squares and parcels of land are now or may hereafter be included as defined in the zoning regulations of the District of Columbia and shown in

the official atlases of the Zoning Commission. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 1; 1973 Ed., § 7-1225.)

Cross references. — As to Surveyor, see §§ 1-901 to 1-929.

As to creation of Zoning Commission, see § 5-412.

Section references. — This section is referred to in §§ 7-1426 to 7-1429.

§ 7-1426. Same — Plans to be approved by Mayor.

Before any of the work authorized in § 7-1425 shall be begun on the ground, a plan or plans thereof shall be prepared and submitted to the Mayor of the District of Columbia for his approval and only to the extent that such plans shall be so approved shall said work or any portion thereof be permitted or undertaken. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 2; 1973 Ed., § 7-1226.)

Section references. — This section is referred to in § 7-1428.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1427. Same — Grade crossings.

Subject only to the approval of the Mayor of the District of Columbia the crossing of any public street or alley other than New York Avenue, within the limits of the total area noted in § 7-1425 may be at or on grade. The said railroad shall, when and as directed by the Mayor of the District of Columbia, construct at its entire cost and expense, an additional overhead bridge for the track hereby authorized to be established over such other street located between Montello Avenue and New York Avenue as such street may now or may hereafter be shown on the Plan of the Permanent System of Highways. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 3; 1973 Ed., § 7-1227.)

Cross references. — As to permanent highway plan, see § 7-107.

As to joint use of utility facilities, see § 43-502.

Section references. — This section is referred to in § 7-1428.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

§ 7-1428. Same — Authority of Mayor not abridged.

Nothing contained in §§ 7-1425 to 7-1429 shall be construed as limiting or abridging the authority of the Mayor of the District of Columbia under §§ 7-515, 7-516 and 7-1415. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 4; 1973 Ed., § 7-1228.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1429. Right to amend, alter or repeal §§ 7-1425 to 7-1429 reserved.

Congress reserves the right to amend, alter, or repeal §§ 7-1425 to 7-1429. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 5; 1973 Ed., § 7-1229.)

Section references. — This section is referred to in § 7-1428.

§ 7-1430. Electrification of existing steam railroad lines.

Steam railroad companies now operating within the District of Columbia are hereby authorized, after approval of their detailed plans and issuance of a permit by the Mayor of the District of Columbia, to electrify their lines within the District of Columbia and across the Anacostia and Potomac Rivers with an alternating current overhead catenary or other type of electrification system, with all necessary transmission, signal, and communication conductors and equipment, poles, conduits, underground and overhead construction, substations, and any other structures necessary in such electrification, the provisions of any law or laws to the contrary notwithstanding. (Mar. 27, 1934, 48 Stat. 506, ch. 97, § 1; 1973 Ed., § 7-1230.)

Section references. — This section is referred to in § 7-1433.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

This section expressly granted authority to District railroads to install catenary systems. *Edwards v. Consolidated Rail Corp.*, 567 F. Supp. 1087 (D.D.C. 1983), *aff'd*, 733 F.2d 966 (D.C. Cir.), *cert. denied*, 469 U.S. 883, 105 S. Ct. 252, 83 L. Ed. 2d 189 (1984).

§ 7-1431. Submarine cables at drawbridge openings.

Submarine cables may be used at drawbridge openings, provided previous approval shall have been obtained from the Department of the Army. (Mar. 27, 1934, 48 Stat. 506, ch. 97, § 2; 1973 Ed., § 7-1231.)

Section references. — This section is referred to in § 7-1433.

§ 7-1432. Construction of electrical conduit systems authorized.

Where necessary for such electrification, the Mayor of the District of Columbia may issue permits to construct conduit systems through or under the surfaces of public streets or other District of Columbia or United States property: Provided, however, that 3 ducts therein shall be reserved for the use of the United States and the District of Columbia. (Mar. 27, 1934, 48 Stat. 507, ch. 97, § 3; 1973 Ed., § 7-1232.)

Cross references. — As to conduits and overhead wires, see §§ 43-1201 to 43-1208.

Section references. — This section is referred to in § 7-1433.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1433. Jurisdiction of Department of Army, Mayor, and Interstate Commerce Commission not limited.

Nothing contained in §§ 7-1430 to 7-1434 shall be construed as limiting or abridging the authority of the Department of the Army, the Mayor of the District of Columbia, or of the Interstate Commerce Commission. (Mar. 27, 1934, 48 Stat. 507, ch. 97, § 4; 1973 Ed., § 7-1233.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1434. Liability of railroad companies for injuries.

The said railroad companies shall be liable for any accident to, or injuries sustained by, any person by reason of any act or omission of the railroad companies or by their agents or servants during the construction, installation, maintenance, or operation of the electrical equipment and apparatus of the railroad trains. (Mar. 27, 1934, 48 Stat. 507, ch. 97, § 5; 1973 Ed., § 7-1234.)

Section references. — This section is referred to in § 7-1433.

This section does not impose strict liability on railroads. *Edwards v. Consolidated Rail Corp.*, 567 F. Supp. 1087 (D.D.C. 1983), *aff'd*, 733 F.2d 966 (D.C. Cir.), *cert. denied*, 469 U.S. 883, 105 S. Ct. 252, 83 L. Ed. 2d 189 (1984).

Operation of catenary systems. — The language of this section by its terms merely continued the existing common-law negligence liability in operation of catenary systems. *Edwards v. Consolidated Rail Corp.*, 567 F. Supp. 1087 (D.D.C. 1983), *aff'd*, 733 F.2d 966 (D.C. Cir.), *cert. denied*, 469 U.S. 883, 105 S. Ct. 252, 83 L. Ed. 2d 189 (1984).

§ 7-1435. Employment of temporary special and technical employees.

The services of draftsmen, assistant engineers, levelers, transitmen, rodmen, chainmen, computers, copyists, overseers, and inspectors temporarily required in connection with sewer, water, street, street-cleaning, or road work, or construction and repair of buildings and bridges, or any general or special engineering or construction work authorized by appropriations may be employed exclusively to carry into effect District of Columbia appropriations when ordered by the Mayor of the District of Columbia in writing, and all such necessary expenditures for the proper execution of said work shall be paid from and equitably charged against the sums appropriated for said work; and the Mayor in his budget estimates shall report the number of such employees performing such services, and their work, and the sums paid to each, and out of what appropriation: Provided, that the expenditures hereunder shall not exceed \$42,000 during any 1 fiscal year: Provided further, that, excluding Inspectors in the Sewer Department, 1 inspector in the Electrical Department, and 1 Inspector in the Repair Shop, no person shall be employed in pursuance of the authority contained in this section for a longer period than 9 months in the aggregate during any 1 fiscal year. (June 28, 1944, 58 Stat. 530, ch. 300, § 2; 1973 Ed., § 7-1235.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1436. Employment of temporary laborers and mechanics.

The Mayor of the District of Columbia, or his duly designated representatives, are authorized to employ temporarily such laborers, skilled laborers, drivers, hostlers, and mechanics as may be required exclusively in connection with sewer, water, street, and road work, and street cleaning, or the construction and repair of buildings and bridges, furniture and equipment, and any general or special engineering or construction or repair work, at per diem rates of pay to be fixed and adjusted from time to time by a wage board and approved by the Council of the District of Columbia, and to incur all necessary engineering and other expenses, exclusive of personal services, incidental to carrying on such work and necessary for the proper execution thereof, said laborers, skilled laborers, drivers, hostlers, and mechanics to be employed to perform such work as may not be required by law to be done under contract, and to pay for such services and expenses from the appropriations under which such services are rendered and expenses incurred. (June 28, 1944, 58 Stat. 531, ch. 300, §2; 1973 Ed., § 7-1236.)

Section references. — This section is referred to in § 7-1437.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(178) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1437. Employment of horses, horse-drawn vehicles, and motortrucks.

All horses, harness, horse-drawn vehicles necessary for use in connection with construction and supervision of sewer, street, street lighting, road work, and street-cleaning work, including maintenance of said horses and harness, and maintenance and repair of said vehicles, and purchase of all necessary articles and supplies in connection therewith, or on construction and repair of buildings and bridges, or any general or special engineering or construction work authorized by District of Columbia appropriations, may be purchased, hired, and maintained, and motortrucks may be hired exclusively to carry into effect said appropriations, when ordered by the Mayor of the District of

Columbia in writing; and all such expenditures necessary for the proper execution of said work, exclusive of personal services, shall be paid from and equitably charged against the sums appropriated for said work; and the Mayor in the budget estimates shall report the number of horses, vehicles, and harness purchased, and horses and vehicles hired, and the sums paid for same, and out of what appropriation; and all horses owned or maintained by the District shall, so far as may be practicable, be provided for in stables owned or operated by said District: Provided, that such horses, horse-drawn vehicles, and carts as may be temporarily needed for hauling and excavating material in connection with works authorized by appropriations may be temporarily employed for such purposes under the conditions named in § 7-1436 in relation to the employment of laborers, skilled laborers, and mechanics. (June 28, 1944, 58 Stat. 531, ch. 300, § 3; 1973 Ed., § 7-1237.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 7-1438. Employment of personnel and equipment to execute work payable from miscellaneous trust fund deposits.

The Mayor of the District of Columbia is authorized to employ in the execution of work, the cost of which is payable from the appropriation account created in the District of Columbia Appropriation Act, approved April 27, 1904, and known as the miscellaneous trust fund deposits, District of Columbia, necessary personal services, horses, carts, and wagons, and to hire therefor motortrucks when specifically and in writing authorized by the Mayor, to establish and fix fees to be charged for such work, maintain operating balances, and to incur all necessary expenses incidental to carrying on such work, and necessary for the proper execution thereof, including the purchase, exchange, maintenance, and operation of motor vehicles for inspection and transportation purposes; such services and expenses to be paid from said appropriation account or operating balances: Provided, that the Mayor may delegate to his duly authorized representatives the employment under this section of laborers, mechanics, and artisans. (June 28, 1944, 58 Stat. 531, ch. 300, § 4; 1973 Ed., § 7-1238.)

References in text. — The “District of Columbia Appropriation Act, approved April 27, 1904,” referred to near the beginning of this

section, means the Act of April 27, 1904, 33 Stat. 363, ch. 1628.

Change in government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Deposit of moneys in General Fund. — Section 7(d) of the Act of June 14, 1980, D.C. Law 3-70, provides that moneys maintained in miscellaneous trust funds pursuant to § 7-1438 shall hereafter be deposited in the General Fund.

§ 7-1439. Helicopter landing pads.

(a) The operation of a helicopter landing pad, which was not in operation prior to July 14, 1987, in any residential district in the District of Columbia, identified in the Zoning Regulations of the District of Columbia and shown in the official atlases of the Zoning Commission for the District of Columbia, shall constitute a public nuisance.

(b) The Corporation Counsel or affected members of the public may maintain an action in the Superior Court of the District of Columbia to abate and enjoin perpetually the nuisance. (Oct. 9, 1987, D.C. Law 7-40, § 2, 34 DCR 5333.)

Legislative history of Law 7-40. — Law 7-40, the "Helicopter Landing Pad Public Nuisance Act of 1987," was introduced in Council and assigned Bill No. 7-191, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on June 30, 1987, and July 14, 1987, respectively. Signed by the Mayor on July 23, 1987, it was assigned Act No. 7-68 and transmitted to both Houses of Congress for its review.

CHAPTER 15. METROPOLITAN WASHINGTON AIRPORTS.

Sec.	Sec.
7-1501. Findings.	7-1507. Federal employees at the Metropolitan Washington Airports.
7-1502. Purpose.	7-1508. Relationship to and effect of other laws.
7-1503. Definitions.	7-1509. Authority to negotiate extension of lease.
7-1504. Lease of Metropolitan Washington Airports.	7-1510. Separability.
7-1505. Capital improvements, construction, and rehabilitation.	7-1511. Nonstop flights.
7-1506. Airports Authority.	

§ 7-1501. Findings.

The Congress finds that:

(1) The 2 federally owned airports in the metropolitan area of Washington, District of Columbia, constitute an important and growing part of the commerce, transportation, and economic patterns of the Commonwealth of Virginia, the District of Columbia, and the surrounding region;

(2) Baltimore/Washington International Airport, owned and operated by the State of Maryland, is an air transportation facility that provides service to the greater Metropolitan Washington region together with the 2 federally owned airports, and timely federal-aid grants to Baltimore/Washington International Airport will provide additional capacity to meet the growing air traffic needs and to compete with other airports on a fair basis;

(3) The federal government has a continuing but limited interest in the operation of the 2 federally owned airports, which serve the travel and cargo needs of the entire Metropolitan Washington region as well as the District of Columbia as the national seat of government;

(4) Operation of the Metropolitan Washington Airports by an independent local agency will facilitate timely improvements at both airports to meet the growing demand of interstate air transportation occasioned by the Airline Deregulation Act of 1978;

(5) All other major air carrier airports in the United States are operated by public entities at the state, regional, or local level;

(6) Any change in status of the 2 airports must take into account the interest of nearby communities, the traveling public, air carriers, general aviation, airport employees, and other interested groups, as well as the interests of the federal government and state governments involved;

(7) In recognition of a perceived limited need for a federal role in the management of these airports and the growing local interest, the Secretary has recommended a transfer of authority from the federal to the local/state level that is consistent with the management of major airports elsewhere in the Nation;

(8) An operating authority with representation from local jurisdictions, similar to authorities at all major airports in the United States, will improve communications with local officials and concerned residents regarding noise at the Metropolitan Washington Airports;

(9) A commission of congressional, state, and local officials and aviation representatives has recommended to the Secretary that transfer of the

federally owned airports be as a unit to an independent authority to be created by the Commonwealth of Virginia and the District of Columbia; and

(10) The federal interest in these airports can be provided through a lease mechanism which provides for local control and operation. (Oct. 30, 1986, 100 Stat. 3341-376, Pub. L. 99-591, § 6002.)

Short title. — Section 6001 of Pub. L. 99-591 provided that: "This title may be cited as the 'Metropolitan Washington Airports Act of 1986'."

References in text. — The "Airline Deregulation Act of 1978," referred to in paragraph (4), is 92 Stat. 1705, Pub. L. 95-504.

Approval of lease regarding Metropoli

tan Washington Airports. — Pursuant to Resolution 7-36, the "Metropolitan Washington Airports Authority Lease Approval Resolution of 1987," effective April 14, 1987, the Council approved the lease, dated March 2, 1987, between the United States of America and the Metropolitan Washington Airport Authority regarding the Metropolitan Washington Airports.

§ 7-1502. Purpose.

(a) It is therefore declared to be the purpose of the Congress in this chapter to authorize the transfer of operating responsibility under long-term lease of the 2 Metropolitan Washington Airport properties as a unit, including access highways and other related facilities, to a properly constituted independent airport authority created by the Commonwealth of Virginia and the District of Columbia, in order to achieve local control, management, operation, and development of these important transaction assets.

(b) Nothing in this chapter shall be construed to prohibit the Airports Authority and the State of Maryland from entering into an agreement whereby Baltimore/Washington International Airport may be made part of a regional airports authority, subject to terms and conditions agreed to by the Airports Authority, the Secretary, the Commonwealth of Virginia, the District of Columbia, and the State of Maryland. (Oct. 30, 1986, 100 Stat. 3341-376, Pub. L. 99-591, § 6003.)

Short title. — See note to § 7-1501.

§ 7-1503. Definitions.

In this chapter:

(1) The term "Administrator" means the Administrator of the Federal Aviation Administration.

(2) The term "Airports Authority" means the Metropolitan Washington Airports Authority, a public body to be created by the Commonwealth of Virginia and the District of Columbia consistent with the requirements of § 7-1506.

(3) The term "employees" means all permanent Federal Aviation Administration personnel employed on the date the lease under § 7-1504 takes effect by the Metropolitan Washington Airports, an organization within the Federal Aviation Administration.

(4) The term "Metropolitan Washington Airports" means Washington National Airport and Washington Dulles International Airport.

(5) The term "Secretary" means the Secretary of Transportation.

(6) The term "Washington Dulles International Airport" means the airport constructed under the Act entitled "An Act to authorize the construction, protection, operation, and maintenance of a public airport on or in the vicinity of the District of Columbia", and includes the Dulles Airport Access Highway and Right-of-way, including the extension between the Interstate Routes I-495 and I-66.

(7) The term "Washington National Airport" means the airport described in the Act entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes". (Oct. 30, 1986, 100 Stat. 3341-376, Pub. L. 99-591, § 6004.)

Short title. — See note to § 7-1501.

References in text. — "An Act to authorize the construction, protection, operation, and maintenance of a public airport on or in the vicinity of the District of Columbia," referred to in paragraph (6), is 64 Stat. 770.

"An Act to provide for the administration of the Washington National Airport, and for other purposes," referred to in paragraph (7), is 54 Stat. 686.

§ 7-1504. Lease of Metropolitan Washington Airports.

(a) The Secretary is authorized to enter into a lease of the Metropolitan Washington Airports with the Airports Authority for a 50-year term and to enter into any related agreement necessary for the transfer of authority and property to the Airports Authority. Authority to enter into a lease and agreement under this section shall lapse 2 years after October 30, 1986.

(b)(1) The lease shall provide for the Airports Authority to pay to the general fund of the Treasury annually an amount, computed using the GNP Price Deflator, to equal \$3,000,000 in 1987 dollars. The Secretary and the Airports Authority may renegotiate the level of lease payments attributable to inflation costs every 10 years.

(2)(A) Not later than 1 year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the actual added costs incurred by the Fund due to discontinued service retirement under § 5 U.S.C. § 8336 (d)(1), of employees who elect not to transfer to the Airports Authority.

(B) Not later than 1 year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the present value of the difference between (i) the future cost of benefits payable from the Fund and due the employees covered under § 7-1507 (e) that are attributable to the period of employment following the date the lease takes effect, and (ii) the contributions made by the employees and the Airports Authority under § 7-1507 (e). In determining the amount due, the Office of Personnel Management shall take into consideration the actual interest such amount can be expected to earn when invested in the Treasury of the United States.

(c) The Airports Authority shall agree, at a minimum, to the following conditions and requirements in the lease:

(1) The Airports Authority shall operate, maintain, protect, promote, and develop the Metropolitan Washington Airports as a unit and as primary airports serving the Metropolitan Washington area.

(2) The real property constituting the Metropolitan Washington Airports shall, during the period of the lease, be used only for airport purposes. For the purposes of this paragraph, the term "airport purposes" means a use of property interests (other than a sale) for aviation business or activities, or for activities necessary or appropriate to serve passengers or cargo in air commerce, or for nonprofit, public use facilities. If the Secretary determines that any portion of the real property leased to the Airports Authority pursuant to this chapter is used for other than airport purposes, the Secretary shall (A) direct that appropriate measures be taken by the Airports Authority to bring the use of such portion of real property in conformity with airport purposes, and (B) retake possession of such portion of real property if the Airports Authority fails to bring the use of such portion into a conforming use within a reasonable period of time, as determined by the Secretary.

(3) The Airports Authority shall be subject to the requirements of 49 U.S.C. § 2210 (a) and the assurances and conditions required of grant recipients under such Act as of the date the lease takes effect. Notwithstanding 49 U.S.C. § 2210 (a) (12), all revenues generated by the Metropolitan Washington Airports shall be expended for the capital and operating costs of such airports.

(4) In acquiring by contract supplies or services for an amount estimated to be in excess of \$200,000, or awarding concession contracts, the Airports Authority shall obtain, to the maximum extent practicable, full and open competition through the use of published competitive procedures. By a vote of 7 members, the Airports Authority may grant exceptions to the requirements of this paragraph.

(5)(A) Except as provided in subparagraph (B) of this paragraph, all regulations of the Metropolitan Washington Airports (14 C.F.R. part 159) shall become regulations of the Airports Authority on the date the lease takes effect and shall remain in effect until modified or revoked by the Airports Authority in accordance with procedures of the Airports Authority.

(B) The following regulations shall cease to be in effect on the date the lease takes effect:

(i) Section 159.59 (a) of Title 14, Code of Federal Regulations (relating to new-technology aircraft); and

(ii) Section 159.191 of Title 14, Code of Federal Regulations (relating to violations of Federal Aviation Administration regulations as Federal misdemeanors).

(C) The Airports Authority may not increase or decrease the number of instrument flight rule takeoffs and landings authorized by 14 C.F.R. 93.121 et seq. at Washington National Airport on October 30, 1986 and may not impose a limitation after the date the lease takes effect on the number of passengers taking off or landing at Washington National Airport.

(6)(A) Except as specified in subparagraph (B) of this paragraph, the Airports Authority shall assume all rights, liabilities, and obligations (tangible

and incorporeal, present and executory) of the Metropolitan Washington Airports on the date the lease takes effect, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, accounts payable, and litigation relating to such rights and obligations, regardless whether judgment has been entered, damages awarded, or appeal taken. Before the date the lease takes effect, the Secretary shall also assure that the Airports Authority has agreed to cooperate in allowing representatives of the Attorney General and the Secretary adequate access to employees and records when needed for the performance of functions related to the period before the effectiveness of the lease. The Airports Authority shall assume responsibility for the Federal Aviation Administration's Master Plans for the Metropolitan Washington Airports.

(B) The procedure for disputes resolution contained in any contract entered into on behalf of the United States before the date the lease takes effect shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract. Claims for monetary damages founded in tort, by or against the United States as the owner and operator of the Metropolitan Washington Airports, arising before the date the lease takes effect shall be adjudicated as if the lease had not been entered into.

(C) The Federal Aviation Administration shall remain responsible for reimbursing the Employees' Compensation Fund, pursuant to § 8147 of Title 5, United States Code, for compensation paid or payable after the date the lease takes effect in accordance with Chapter 81 of Title 5, United States Code, with regard to any injury, disability, or death due to events arising before such date, whether or not a claim has been filed or is final on such date.

(D) The Airports Authority shall continue all collective bargaining rights enjoyed before the date the lease takes effect by employees of the Metropolitan Washington Airports.

(7) The Comptroller General of the United States may conduct periodic audits of the activities and transactions of the Airports Authority in accordance with generally accepted management principles, and under such rules and regulations as may be prescribed by the Comptroller General. Any such audit shall be conducted at such place or places as the Comptroller General may deem appropriate. All books, accounts, records, reports, files, papers, and property of the Airports Authority shall remain in possession and custody of the Airports Authority.

(8) The Airports Authority shall develop a code of ethics and financial disclosure in order to assure the integrity of all decisions made by its board of directors and employees.

(9) Notwithstanding any other provision of law, no landing fee imposed for operating an aircraft or revenues derived from parking automobiles:

(A) At Washington Dulles International Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington Dulles International Airport.

(B) At Washington National Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington Dulles International Airport.

(10) The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft, except that the Airports Authority may require a minimum landing fee not in excess of the landing fee for aircraft weighing 12,500 pounds.

(11) The Secretary shall include such other terms and conditions applicable to the parties to the lease as are consistent with and carry out the provisions of this chapter.

(d) The Secretary shall submit the lease entered into under this section to Congress. The lease may not take effect before the passage of (1) 30 days, or (2) 10 days in which either House of Congress is in session, whichever occurs later.

(e) The district courts of the United States shall have jurisdiction to compel the Airports Authority and its officers and employees to comply with the terms of the lease. An action may be brought on behalf of the United States by the Attorney General, or by any aggrieved party. (Oct. 30, 1986, 100 Stat. 3341-376, Pub. L. 99-591, § 6005.)

Section references. — This section is referred to in §§ 7-1503, 7-1506, 7-1507, 7-1508, and 7-1509.

Short title. — See note to § 7-1501.

Amendment of lease. — Section 7003 of Pub. L. 102-240, 105 Stat. 2202, December 18,

1991, provided for amendment of the lease with the Metropolitan Washington Airports Authority to secure the Airports Authority's consent to the conditions relating to the new Board of Review to be established under the Act.

§ 7-1505. Capital improvements, construction, and rehabilitation.

(a) It is the sense of the Congress that the Airports Authority should:

(1) Pursue the improvement, construction, and rehabilitation of the facilities at Washington Dulles International Airport and Washington National Airport simultaneously; and

(2) To the extent practicable, cause the improvement, construction, and rehabilitation proposed by the Secretary to be completed at both of such Airports within 5 years after the earliest date on which the Airports Authority issues bonds under the authority required by § 7-1506 for any such improvement, construction, or rehabilitation.

(b) The Secretary shall assist the 3 airports serving the Washington, D.C. metropolitan area in planning for operational and capital improvements at those airports and shall accelerate consideration of applications for federal financial assistance by whichever of the 3 airports is most in need of increasing airside capacity. (Oct. 30, 1986, 100 Stat. 3341-376, Pub. L. 99-591, § 6006.)

Short title. — See note to § 7-1501.

§ 7-1506. Airports Authority.

(a) The Airports Authority shall be a public body corporate and politic, having the powers and jurisdiction as are conferred upon it jointly by the legislative authority of the Commonwealth of Virginia and the District of Columbia or by either of the jurisdictions and concurred in by the legislative

authority of the other jurisdiction, but at a minimum meeting the requirements of this section.

(b) The Airports Authority shall be:

(1) Independent of the Commonwealth of Virginia and its local governments, the District of Columbia, and the federal government; and

(2) A political subdivision constituted solely to operate and improve both Metropolitan Washington Airports as primary airports serving the Metropolitan Washington area.

(c) The Airports Authority shall be authorized:

(1) To acquire, maintain, improve, operate, protect, and promote the Metropolitan Washington Airports for public purposes;

(2) To issue bonds from time to time in its discretion for public purposes, including the purposes of paying all or any part of the cost of airport improvements, construction, and rehabilitation, and the acquisition of real and personal property, including operating equipment for the airports, which bonds:

(A) Shall not constitute a debt of either jurisdiction or a political subdivision thereof; and

(B) May be secured by the Airports Authority's revenues generally, or exclusively from the income and revenues of certain designated projects whether or not they are financed in whole or in part from the proceeds of such bonds;

(3) To acquire real and personal property by purchase, lease, transfer, or exchange, and to exercise such powers of eminent domain within the Commonwealth of Virginia as are conferred upon it by the Commonwealth of Virginia;

(4) To levy fees or other charges; and

(5) To make and maintain agreements with employee organizations to the extent that the Federal Aviation Administration is so authorized on October 30, 1986.

(d) The Airports Authority shall be subject to a conflict-of-interest provision providing that members of the board and their immediate families may not be employed by or otherwise hold a substantial financial interest in any enterprise that has or is seeking a contract or agreement with the Airports Authority or is an aeronautical, aviation services, or airport services enterprise that otherwise has interests that can be directly affected by the Airports Authority. Exceptions to requirements of the preceding sentence may be made by the official appointing a member at the time the member is appointed, if the financial interest is fully disclosed and so long as the member does not participate in board decisions that directly affect such interest. The Airports Authority shall include in its code developed under § 7-1504(c)(8) the standards by which members will determine what constitutes a substantial financial interest and the circumstances under which an exception may be granted.

(e)(1) The Airports Authority shall be governed by a board of directors of 11 members, as follows:

(A) Five members shall be appointed by the Governor of Virginia;

(B) Three members shall be appointed by the Mayor of the District of Columbia;

(C) Two members shall be appointed by the Governor of Maryland; and

(D) One member shall be appointed by the President with the advice and consent of the Senate.

The Chairman shall be appointed from among the members by majority vote of the members and shall serve until replaced by majority vote of the members.

(2) Members shall (A) not hold elective or appointive political office, (B) serve without compensation other than for reasonable expenses incident to board functions, and (C) reside within the Washington Standard Metropolitan Statistical Areas, except that the member appointed by the President shall not be required to reside in that area.

(3) Members shall be appointed to the board for a term of 6 years, except that of members first appointed:

(A) By the Governor of Virginia, 2 shall be appointed for 4 years and 2 shall be appointed for 2 years;

(B) By the Mayor of the District of Columbia, 1 shall be appointed for 4 years and 1 shall be appointed for 2 years; and

(C) By the Governor of Maryland, 1 shall be appointed for 4 years.

(4) A member of the board appointed by the President shall be subject to removal by the President for cause.

(5) Seven votes shall be required to approve bond issues and the annual budget.

(f)(1) The board of directors shall be subject to review of its actions and to requests, in accordance with this subsection, by a Board of Review of the Airports Authority. Such Board of Review shall be established by the board of directors and shall consist of the following, in their individual capacities, as representatives of users of the Metropolitan Washington Airports:

(A) Two members of the Public Works and Transportation Committee and 2 members of the Appropriations Committee of the House of Representatives from a list provided by the Speaker of the House;

(B) Two members of the Commerce, Science, and Transportation Committee and 2 members of the Appropriations Committee of the Senate from a list provided by the President pro tempore of the Senate; and

(C) One member chosen alternately from members of the House of Representatives and members of the Senate, from a list provided by the Speaker of the House or the President pro tempore of the Senate, respectively. The members of the Board of Review shall elect a chairman. A member of the House of Representatives or the Senate from Maryland or Virginia and the Delegate from the District of Columbia may not serve on the Board of Review.

(2) Members of the Board of Review appointed under subparagraphs (A) and (B) of paragraph (1) of this subsection shall be appointed for terms of 6 years, except that of the members first appointed, 1 member under each of subparagraphs (A) and (B) of paragraph (1) of this subsection shall be appointed for a term of 2 years and 1 member under each of subparagraphs (A) and (B) of paragraph (1) of this subsection shall be appointed for a term of 4 years. Members of the Board of Review appointed under subparagraph (C) of

paragraph (1) of this subsection shall be appointed for terms of 2 years. A vacancy in the Board shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term.

(3) The Board of Review shall establish procedures for conducting its business. The procedures may include requirements for a quorum at meetings and for proxy voting. The Board shall meet at least once each year and shall meet at the call of the chairman or 3 members of the Board. Any decision of the Board of Review under paragraph (4) or (5) of this subsection shall be by a vote of 5 members of the Board.

(4)(A) An action of the Airports Authority described in subparagraph (B) of this paragraph shall be submitted to the Board of Review at least 30 days (or at least 60 days in the case of the annual budget) before it is to become effective.

(B) The following are the actions referred to in subparagraph (A) of this paragraph:

- (i) The adoption of an annual budget;
- (ii) The authorization for the issuance of bonds;
- (iii) The adoption, amendment, or repeal of a regulation;
- (iv) The adoption or revision of a master plan, including any proposal for land acquisition; and
- (v) The appointment of the chief executive officer.

(C) If the Board of Review does not disapprove an action within 30 days of its submission under this paragraph, the action may take effect. If the Board of Review disapproves any such action, it shall notify the Airports Authority and shall give reasons for the disapproval.

(D) An action disapproved under this paragraph shall not take effect. Unless an annual budget for a fiscal year has taken effect in accordance with this paragraph, the Airports Authority may not obligate or expend any money in such fiscal year, except for (i) debt service on previously authorized obligations, and (ii) obligations and expenditures for previously authorized capital expenditures and routine operating expenses.

(5) The Board of Review may request the Airports Authority to consider and vote, or to report, on any matter related to the Metropolitan Washington Airports. Upon receipt of such a request the Airports Authority shall consider and vote, or report, on the matter as promptly as feasible.

(6) Members of the Board of Review may participate as nonvoting members in meetings of the board of the Airports Authority.

(7) The Board of Review may hire 2 staff persons to be paid by the Airports Authority. The Airports Authority shall provide such clerical and support staff as the Board may require.

(8) A member of the Board of Review shall not be liable in connection with any claim, action, suit, or proceeding arising from service on the Board.

(g) Any action of the Airports Authority changing, or having the effect of changing, the hours of operation of or the type of aircraft serving either of the Metropolitan Washington Airports may be taken only by regulation of the Airports Authority.

(h) If the Board of Review established under subsection (f) of this section is unable to carry out its functions under this chapter by reason of a judicial order, the Airports Authority shall have no authority to perform any of the actions that are required by subsection (f)(4) of this section to be submitted to the Board of Review. (Oct. 30, 1986, 100 Stat. 3341-376, Pub. L. 99-591, § 6007.)

Section references. — This section is referred to in §§ 7-1503, 7-1505, 7-1508, and 7-1510.

Short title. — See note to § 7-1501.

Limitation on Authority of Airports Authority. — Section 7004(c) of Pub. L. 102-240, 105 Stat. 2202, December 18, 1991, limited the authority of the Metropolitan Washington Airports Authority to perform any of the actions required to be submitted to the Board of Review until the Airports Authority establishes a new Board of Review in accordance with this Act.

Board of Review held unconstitutional.

— The Board of Review, as currently established violates the constitutional prohibition against legislative agents performing executive functions. *Citizens for Abatement of Aircraft Noise, Inc. v. Metropolitan Wash. Airports Auth.*, 917 F.2d 48 (D.C. Cir. 1990), *aff'd*, 501 U.S. 252, 111 S. Ct. 2298, 115 L. Ed. 2d 236 (1991).

Cited in *Alcorn v. Wolfe*, 827 F. Supp. 47 (D.D.C. 1993).

§ 7-1507. Federal employees at the Metropolitan Washington Airports.

(a) Not later than the date the lease under § 7-1504 takes effect, the Secretary shall ensure that the Airports Authority has established arrangements to protect the employment interests of employees during the 5-year period beginning on such date. These arrangements shall include provisions:

(1) Which ensure that the Airports Authority will adopt labor agreements in accordance with the provisions of subsection (b) of this section;

(2) For the transfer and retention of all employees who agree to transfer to the Airports Authority in their same positions for the 5-year period commencing on the date the lease under § 7-1504 takes effect except in cases of reassignment, separation for cause, resignation, or retirement;

(3) For the payment by the Airports Authority of basic and premium pay to transferred employees, except in cases of separation for cause, resignation, or retirement, for 5 years commencing on the date the lease takes effect at or above the rates of pay in effect for such employees on such date;

(4) For credit during the 5-year period commencing on the date the lease takes effect for accrued annual and sick leave and seniority rights which have been accrued during the period of federal employment by transferred employees retained by the Airports Authority; and

(5) For an offering of not less than 1 life insurance and 3 health insurance programs for transferred employees retained by the Airports Authority during the 5-year period beginning on the date the lease takes effect which are reasonably comparable with respect to employee premium cost and coverage to the federal health and life insurance programs available to employees on the day before such date.

(b)(1) The Airports Authority shall adopt all labor agreements which are in effect on the date the lease under § 7-1504 takes effect. Such agreements shall continue in effect for the 5-year period commencing on such date, unless the agreement provides for a shorter duration or the parties agree to the contrary

before the expiration of that 5-year period. Such agreements shall be renegotiated during the 5-year period, unless the parties agree otherwise. Any labor-management negotiation impasse declared before the date the lease takes effect shall be settled in accordance with Chapter 71 of Title 5, United States Code.

(2) The arrangements made pursuant to this section shall assure, during the 50-year lease term, the continuation of all collective bargaining rights enjoyed by transferred employees retained by the Airports Authority.

(c) Any transferred employee whose employment with the Airports Authority is terminated during the 5-year period beginning on the date the lease under § 7-1504 takes effect shall be entitled, as a condition of any lease entered into in accordance with § 7-1504, to rights and benefits to be provided by the Airports Authority that are similar to those such employee would have had under federal law if termination had occurred immediately before such date.

(d) Any employee who transfers to the Airports Authority under this section shall not be entitled to lump-sum payment for unused annual leave under 5 U.S.C. § 5551, but shall be credited by the Airports Authority with the unused annual leave balance on the date the lease under § 7-1504 takes effect, along with any unused sick leave balance on such date. During the 5-year period beginning on such date, annual and sick leave shall be earned at the same rates permitted on the day before such date, and observed official holidays shall be the same as those specified in 5 U.S.C. § 6103.

(e) Any federal employee who transfers to the Airports Authority and who on the day before the date the lease under § 7-1504 takes effect is subject to subchapter III of Chapter 83 of Title 5, United States Code, or Chapter 84 of such title shall, so long as continually employed by the Airports Authority without a break in service, continue to be subject to such subchapter or chapter, as the case may be. Employment by the Airports Authority without a break in continuity of service shall be considered to be employment by the United States government for purposes of such subchapter and chapter. The Airports Authority shall be the employing agency for purposes of such subchapter and chapter and shall contribute to the Civil Service Retirement and Disability Fund such sums as are required by such subchapter and chapter.

(f) An employee who does not transfer to the Airports Authority and who does not otherwise remain a federal employee shall be entitled to all of the rights and benefits available under federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Airports Authority of work substantially similar to that performed for the federal government.

(g) The Airports Authority shall allow representatives of the Secretary adequate access to employees and employee records of the Airports Authority when needed for the performance of functions related to the period before the date the lease under § 7-1504 takes effect. The Secretary shall provide the Airports Authority access to employee records of transferring employees for appropriate purposes. (Oct. 30, 1986, 100 Stat. 3341-376, Pub. L. 99-591, § 6008.)

Section references. — This section is referred to in § 7-1504.

Short title. — See note to § 7-1501.

§ 7-1508. Relationship to and effect of other laws.

(a) In order to assure that the Airports Authority has the same proprietary powers and is subject to the same restrictions with respect to federal law as any other airport except as otherwise provided in this chapter, during the period that the lease authorized by § 7-1504 is in effect:

(1) The Metropolitan Washington Airports shall be considered public airports for purposes of 49 U.S.C. App. § 2201 et seq.; and

(2) The Acts entitled “An Act to provide for the administration of the Washington National Airport, and for other purposes”, “An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia”, and “An act making supplemental appropriations for the support of the Government for the fiscal year ending June 30, 1941, and for other purposes” shall not apply to the operation of the Metropolitan Washington Airports, and the Secretary shall be relieved of all responsibility under those Acts.

(b) The Metropolitan Washington Airports and the Airports Authority shall not be subject to the requirements of any law solely by reason of the retention by the United States of the fee simple title to such airports or by reason of the authority of the Board of Review under § 7-1506(f).

(c) The Commonwealth of Virginia shall have concurrent police power authority over the Metropolitan Washington Airports, and the courts of the Commonwealth of Virginia may exercise jurisdiction over Washington National Airport.

(d)(1) The authority of the National Capital Planning Commission under § 5 of the Act of June 6, 1924 (40 U.S.C. § 71d) shall not apply to the Airports Authority.

(2) The Airports Authority shall consult:

(A) With the National Capital Planning Commission and the Advisory Council on Historic Preservation before undertaking any major alterations to the exterior of the main terminal at Washington Dulles International Airport; and

(B) With the National Capital Planning Commission before undertaking development that would alter the skyline of Washington National Airport when viewed from the opposing shoreline of the Potomac River or from the George Washington Parkway.

(e)(1) The Administrator may not increase the number of instrument flight rule takeoffs and landings authorized for air carriers by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on October 30, 1986 and may not decrease the number of such takeoffs and landings except for reasons of safety.

(2) The Federal Aviation Administration air traffic regulation entitled “Modification of Allocation: Washington National Airport” (14 C.F.R. 93.124) shall cease to be in effect on October 30, 1986. (Oct. 30, 1986, 100 Stat. 3341-376, Pub. L. 99-591, § 6009.)

Short title. — See note to § 7-1501.

References in text. — “An Act to provide for the administration of the Washington National Airport, and for other purposes,” referred to in subsection (a)(2), is 54 Stat. 686.

“An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of

Columbia,” referred to in subsection (a)(2), is 64 Stat. 770.

“An Act making supplemental appropriations for the support of the government for the fiscal year ending June 30, 1941, and for other purposes,” referred to in subsection (a)(2), is 54 Stat. 1030.

§ 7-1509. Authority to negotiate extension of lease.

The Secretary and the Airports Authority may at any time negotiate an extension of the lease entered into under § 7-1504(a). (Oct. 30, 1986, 100 Stat. 3341-376, Pub. L. 99-591, § 6010.)

Short title. — See note to § 7-1501.

§ 7-1510. Separability.

Except as provided in § 7-1506(h), if any provision of this chapter or the application thereof to any person or circumstance, is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby. (Oct. 30, 1986, 100 Stat. 3341-376, Pub. L. 99-591, § 6011.)

Short title. — See note to § 7-1501.

§ 7-1511. Nonstop flights.

An air carrier may not operate an aircraft nonstop in air transportation between Washington National Airport and another airport that is more than 1,250 statute miles away from Washington National Airport. (Oct. 30, 1986, 100 Stat. 3341-376, Pub. L. 99-591, § 6012.)

Short title. — See note to § 7-1501.

TITLE 8. PARKS AND PLAYGROUNDS.

Chapter

1. General Provisions..... §§ 8-101 to 8-166.
2. Recreation Board..... §§ 8-201 to 8-226.
3. Fundraising for Recreational Facilities..... §§ 8-301 to 8-306.

CHAPTER 1. GENERAL PROVISIONS.

- | Sec. | Sec. |
|--|--|
| 8-101. Authority to acquire fee title to land subject to limited rights reserved to grantor and to acquire limited permanent rights in land adjoining park property. | 8-125. Licenses for temporary structures on reservations used as playgrounds. |
| 8-102. Establishing and making clear title of United States to lands or waters of Potomac River, Anacostia River, Eastern Branch, and Rock Creek. | 8-126. Part of Washington Aqueduct may be transferred for playground purposes. |
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| 8-120. Squares 612 and 613 made part of park system. | 8-143. Same — Leasing authorized; disposition of proceeds. |
| 8-121. Fort Davis and Fort Dupont Parks. | 8-144. Same — Acceptance of dedicated property authorized. |
| 8-122. Jurisdiction over reservation 185. | 8-145. Same — Protection of Rock Creek and its tributaries. |
| 8-123. Use of spaces or reservations for widening roadways. | 8-146. Piney Branch Parkway. |
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 8-164. Same — Possession, control, and maintenance; fees.
 8-165. Same — Operation; disposition of moneys received.
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§ 8-101. Authority to acquire fee title to land subject to limited rights reserved to grantor and to acquire limited permanent rights in land adjoining park property.

The authority of the National Capital Planning Commission, established by the Act approved April 30, 1926, is hereby enlarged as follows: Said Commission is hereby authorized to acquire, for and in behalf of the United States of America, by gift, devise, purchase, or condemnation, in accordance with the provisions of the Act of June 6, 1924, as amended by the Act of April 30, 1926:

(1) Fee title to land subject to limited rights, but not for business purposes, reserved to the grantor: Provided, that such reservation of rights shall not continue beyond the life or lives of the grantor or grantors of the fee: Provided further, that in the opinion of said Commission the permanent public park purposes for which control over said land is needed are not essentially impaired by said reserved rights and that there is a substantial saving in cost by acquiring said land subject to said limited rights as compared with the cost of acquiring unencumbered title thereto; and

(2) Permanent rights in land adjoining park property sufficient to prevent the use of said land in certain specified ways which would essentially impair the value of the park property for its purposes: Provided, that in the opinion of said Commission the protection and maintenance of the essential public values of said park can thus be secured more economically than by acquiring said land in fee or by other available means: Provided further, that all contracts for acquisition of land subject to such limited rights reserved to the grantor and for acquisition of such limited permanent rights in land shall be subject to the approval of the President of the United States. (Dec. 22, 1928, 45 Stat. 1070, ch. 48, § 1; 1973 Ed., § 8-103.)

References in text. — The Act approved April 30, 1926, referred to in the introductory paragraph of this section, means the Act of

April 30, 1926, 44 Stat. 374, ch. 198, which amended § 1 of the Act of June 6, 1924, 43 Stat. 463, ch. 270.

The Act of June 6, 1924, referred to in the introductory paragraph of this section, means the Act of June 6, 1924, 43 Stat. 463, ch. 270.

Delegation of functions. — Authority of the President of the United States under this section to approve contracts for acquisition of land subject to limited rights reserved to the grantor and for the acquisition of limited permanent rights in land adjoining park property was delegated to the Director of the Office of Management and Budget by § 9(5) of Execu-

tive Order No. 11609, July 22, 1971, 36 F.R. 13747.

Transfer of functions. — The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, 43 Stat. 463, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

Cited in *Speyer v. Barry*, App. D.C., 588 A.2d 1147 (1991).

§ 8-102. Establishing and making clear title of United States to lands or waters of Potomac River, Anacostia River, Eastern Branch, and Rock Creek.

For the purpose of establishing and making clear the title of the United States in and to any part or parcel of land or water in, under, and adjacent to the Potomac River, the Anacostia River, or Eastern Branch, and Rock Creek, including the shores and submerged or partly submerged land, as well as the banks of said waterways, and also the upland immediately adjacent thereto, including made land, flat lands and marsh lands, in which persons and corporations and others may have or pretend to have any right, title, claim, or interest adverse to the complete title of the United States as set forth in an Act entitled "An Act providing for the protection of the interest of the United States in lands and water comprising any part of the Potomac River, the Anacostia River, Eastern Branch, and Rock Creek, and adjacent lands thereto," approved April 27, 1912 (37 Stat. 93), and in order to facilitate the same, by making equitable adjustments of such claims and controversies between the United States of America and such adverse claimants, the Secretary of the Interior is authorized to make and accept, on behalf of the United States, by way of compromise when deemed to be in the public interest such conveyances, including deeds of quitclaim and restrictive and collateral covenants, of the lands in dispute as shall be also approved by the National Capital Planning Commission and the Attorney General of the United States. (June 4, 1934, 48 Stat. 836, ch. 375; 1973 Ed., § 8-104.)

Transfer of functions. — The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, 43 Stat. 463, ch. 270,

§ 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

Cited in *United States v. Belt*, 142 F.2d 761 (D.C. Cir. 1944).

§ 8-103. Lease of lands acquired for park, parkway, or playground; term; renewal.

The Administrator of General Services is authorized, subject to the approval of the National Capital Planning Commission, to lease, for a term not exceeding 5 years, and to renew such lease, subject to such approval, for an additional term not exceeding 5 years, pending need for their immediate use in

other ways by the public, and on such terms as the Administrator shall determine, land or any existing building or structure on land acquired for park, parkway, or playground purposes. (Dec. 22, 1928, 45 Stat. 1070, ch. 48, § 2; 1973 Ed., § 8-105.)

Cross references. — As to effect of comprehensive program for public recreation on leases for playgrounds, see § 8-213.

Transfer of functions. — The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, 43 Stat. 463, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan

No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-104. Control of park system; composition thereof.

(a) The park system of the District of Columbia is placed under the exclusive charge and control of the Director of the National Park Service, under such regulations as may be prescribed by the President of the United States.

(b) The said park system shall be held to comprise: (1) All public spaces laid down as reservations on the map of 1894 accompanying the annual report for 1894 of the officer in charge of public buildings and grounds; (2) all portions of the space in the streets and avenues of the said District, after the same shall have been set aside by the Council of the District of Columbia for park purposes: Provided, that no areas less than 250 square feet between sidewalk lines shall be included within the said park system, and no improvements shall be made in unimproved public spaces in streets between building lines or building lines prolonged until the outlines of such portions as are to be improved as parks shall have been laid out by the Council of the District of Columbia: And provided further, that the said Director is authorized temporarily to turn over the care of any of the parking spaces included in clauses (1) and (2) of this subsection, to private owners of adjoining lands under such regulations as he may prescribe and with the condition that the said private owners shall pay special assessments for improvements contiguous to such parking, under the same regulations as are or may be prescribed for private lands: And provided further, that the Council of the District of Columbia is authorized and directed to denominate portions of streets in the District of Columbia as business streets and to authorize the use, on such portions of

streets, for business purposes by abutting property owners, under such general regulations as said Council may prescribe, of so much of the sidewalk and parking as may not be needed, in the judgment of said Council, by the general public, under the following conditions, namely:

(1) Wherein a portion of a street not already denominated a business street a majority of a frontage not less than 3 blocks in length is occupied and used for business purposes; and

(2) Where a portion of a street has already been denominated a business street, and there exists adjoining such portion a block or more whose frontage is occupied and used for business purposes. (July 1, 1898, 30 Stat. 570, ch. 543, § 2; Feb. 2, 1904, 33 Stat. 10, ch. 89; Apr. 14, 1906, 34 Stat. 112, ch. 1622; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; 1973 Ed., § 8-108.)

Cross references. — As to rules and regulations for the protection of life, health, and property, see § 1-319.

As to control of streets, see § 7-102.

As to penalty for driving animals or vehicles over footways, see § 22-1118.

Section references. — This section is referred to in §§ 8-129, 8-137, 8-138, 8-142, 8-146, and 8-154.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(179) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with

power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

Tour service immune from District's licensing requirements. — The Secretary of the Interior has exclusive authority to regulate interpretive tour service operated under a contract with the Department of the Interior, and the service therefore is immune from the enforcement of the District of Columbia licensing requirements. *District of Columbia v. Landmark Servs., Inc.*, 416 F. Supp. 559 (D.D.C. 1976), modified sub nom. *United States v. District of Columbia*, 571 F.2d 651 (D.C. Cir. 1977).

Applicability of local laws to federal concessionaires. — The Secretary of the Interior's exclusive control over the shuttle service between the Mall and the Stadium under 40 U.S.C. § 804 precluded application to a federal concessionaire of local District of Co-

lumbia laws relating to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. *United States v. District of Columbia*, 571 F.2d 651 (D.C. Cir. 1977).

Certificate of convenience and necessity is not required of a concessionaire under contract with the Secretary of Interior to conduct bus tours of the Capitol Mall. *Universal Interpretive Shuttle Corp. v. Washington Metro. Area Transit Comm'n*, 393 U.S. 186, 89 S. Ct. 354, 21 L. Ed. 2d 334 (1968).

Applicability of section to parkways. — This section applies to the District's actions in transferring jurisdiction and control over certain portions of a parkway at issue rather than a closing under the Street Readjustment Act. *Tenley & Cleveland Park Emergency Comm. v. District of Columbia*, 115 WLR 1973 (Super. Ct. 1987).

Cited in *Udall v. D.C. Transit Sys.*, 404 F.2d 1358 (D.C. Cir. 1968); *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980); *District of Columbia Transit Sys. v. United States*, 717 F.2d 1438 (D.C. Cir. 1983).

§ 8-105. Power to make and enforce vehicle and traffic regulations.

The Director of the National Park Service is authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District of Columbia, under his control, subject to the penalties prescribed in the Act entitled "An Act regulating the speed of automobiles in the District of Columbia, and for other purposes," approved June 29, 1906. (June 5, 1920, 41 Stat. 898, ch. 235, § 1; 1973 Ed., § 8-109.)

Cross references. — As to traffic regulations, see § 40-703.

As to park grounds excepted from operation of Traffic Act of 1925, see § 40-721.

References in text. — The Act entitled "An Act regulating the speed of automobiles in the District of Columbia, and for other purposes," approved June 29, 1906, referred to at the end of this section, was repealed by the Act of March 3, 1925, 43 Stat. 1125, ch. 446, § 16(a).

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works

Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

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Certificate of convenience and necessity is not required of a concessionaire under a contract with the Secretary of Interior to conduct bus tours of the Capitol Mall. *Universal Interpretive Shuttle Corp. v. Washington Metro. Area Transit Comm'n*, 393 U.S. 186, 89 S. Ct. 354, 21 L. Ed. 2d 334 (1968).

Cited in *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980).

§ 8-106. Jurisdiction and control of street parking.

The jurisdiction and control of the street parking in the streets and avenues of the District of Columbia is transferred to and vested in the Council of the District of Columbia. (July 1, 1898, 30 Stat. 570, ch. 543, § 1; 1973 Ed., § 8-110.)

Cross references. — As to regulation of traffic, see § 40-703.

As to interstate agreement concerning enforcement of traffic laws, including parking violations, see § 40-706.

As to regulation of public off-street parking facilities, see §§ 40-801 to 40-810.

As to parking restrictions on public or private property, see §§ 40-812 and 40-813.

Section references. — This section is referred to in §§ 8-129, 8-137, and 8-138.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(180) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Decatur Corp. v. Friedman*, 39 F. Supp. 692 (D.D.C. 1941), *aff'd*, 135 F.2d 812 (D.C. Cir. 1943).

§ 8-107. Small parks at intersections of streets outside original city limits.

Public parks acquired by the condemnation of small park areas at the intersections of streets outside the limits of the original City of Washington, shown on the map on file showing areas surrounded by streets, in the Office of the Mayor of the District of Columbia, shall become a part of the park system of the District of Columbia and be under the control of the Director of the National Park Service. (Mar. 4, 1913, 37 Stat. 971, ch. 150, § 1; July 21, 1914, 38 Stat. 550, ch. 191; Aug. 1, 1914, 38 Stat. 625, ch. 223, § 1; 1973 Ed., § 8-111.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with

power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Adminis-

trator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-108. Meridian Hill Park.

Meridian Hill Park is a part of the park system of the District of Columbia, under the control of the Director of the National Park Service. (June 25, 1910, 36 Stat. 700, ch. 383, § 36; 1973 Ed., § 8-112.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings

and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-109. Montrose Park.

Montrose Park is a part of the park system of the District of Columbia, under the control of the Director of the National Park Service. (Mar. 2, 1911, 36 Stat. 1006, ch. 192; 1973 Ed., § 8-113.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their perfor-

mance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works

Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both

space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-110. Portion of Water Street authorized to be part of park system.

The Mayor of the District of Columbia is authorized to close upper Water Street, between Twenty-second and Twenty-third Streets, Northwest, lying north of Potomac Park and south of square 62: Provided, that the consent in writing of the owners of three-fourths of all private property on the south side of square 62 is first had and obtained; and upon the closing of said street between the limits named the Mayor of the District of Columbia is authorized to transfer the land contained in the bed of said street to the Director of the National Park Service, as part of the park system of the District of Columbia: Provided further, that the said Mayor is authorized to enter upon said closed area at all times for the purpose of maintenance and repair of all existing sewers and sewer appurtenances. (May 13, 1932, 47 Stat. 154, ch. 180, § 1; 1973 Ed., § 8-114.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all

functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-111. Transfer of jurisdiction over property between United States and District of Columbia — Authorization.

Federal and District authorities administering properties within the District of Columbia owned by the United States or by the said District are authorized to transfer jurisdiction over parts or all of such properties among or between themselves for purposes of administration and maintenance under such conditions as may be mutually agreed upon: Provided, that prior to the consummation of any transfer hereunder such proposed transfer shall be recommended by the National Capital Planning Commission: Provided further, that the Mayor shall submit to the Council for approval by resolution any proposed transfer of jurisdiction of property pursuant to this section: Provided further, that all such transfers and agreements shall be reported to Congress by the District authorities concerned. (June 6, 1924, ch. 270, § 9; May 20, 1932, 47 Stat. 161, ch. 197, § 1; July 19, 1952, 66 Stat. 790, ch. 949, § 1; Aug. 30, 1954, 68 Stat. 967, ch. 1076, § 1(20); 1973 Ed., § 8-115; ———, 1995, D.C. Law 10- (Act 10-302), § 11, 41 DCR 5193.)

Cross references. — As to power of Metropolitan Police over federal buildings and grounds, see § 4-116.

As to jurisdiction of land, buildings, and facilities of Recreation Board, see § 8-222.

Section references. — This section is referred to in §§ 5-826, 7-138, and 8-112.

Effect of amendments. — D.C. Law 10- (Act 10-302) inserted "Provided further, that the Mayor shall submit to the Council for approval by resolution any proposed transfer of jurisdiction of property pursuant to this section" near the end.

Legislative history of Law 10- (Act 10-302). — Law 10- (Act 10-302), the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10- (Act 10-302) is projected to become law on May 25, 1995.

Transfer of land for highway purposes. — Pursuant to Resolution 5-156, the "Transfer of Jurisdiction Over Portions of Land Owned by the Government Printing Office to the District of Columbia for Highway Purposes Resolution of 1983", effective May 10, 1983, the Council accepted the transfer of jurisdiction over portions of lots 884 and 885 in Square 677 from the United States Government Printing Office to the District of Columbia for highway purposes as shown on the plat filed with the Surveyor's Office of the District of Columbia (S.O. 75-158).

Pursuant to Resolution 5-640, the "Transfer of Jurisdiction of Parts of Whitehaven Street, N.W., and Observatory Circle, N.W., and part of Reservation 357 Resolution of 1984," effective April 30, 1984, the Council approved the transfer of jurisdiction from the District of Columbia to the National Park Service, for park purposes, of parts of Whitehaven Street, N.W., and Observatory Circle, N.W., and accepted the transfer of jurisdiction from the National Park Service to the District of Columbia, for highway purposes, of part of Reservation 357, as shown on the Surveyor's plat filed under S.O. 82-227.

Pursuant to Resolution 5-773, the "Transfer of Jurisdiction over part of United States Reservation 500 Resolution of 1984," effective July 10, 1984, the Council accepted the transfer of jurisdiction from the National Park Service of part of United States Reservation 500 for the Metropolitan Police Boys' and Girls' Club, as shown on the plat on file in the Office of the Surveyor of the District of Columbia under S.O. 83-245.

Pursuant to Resolution 8-232, the "Transfer of Jurisdiction over Portions of Public Streets Adjacent to the U.S. Navy's Bellevue Housing Complex, S.O. 87-300, Resolution of 1990", effective June 22, 1990, the Council approved the transfer from the District of Columbia to the United States Department of the Navy of jurisdiction over portions of Chesapeake Street, S.W., Magazine Road, S.W., and an unnamed public street west of Overlook Avenue, S.W., in Ward 8.

Council approval of transfer of jurisdiction over Georgetown Waterfront park. — Pursuant to Resolution 6-284, the "Transfer of

Jurisdiction over Georgetown Waterfront Park for Public Park and Recreational Purposes, S.O. 84-230, Resolution of 1985," effective September 10, 1985, the Council approved the transfer of jurisdiction over Georgetown Waterfront Park in Ward 2 to the National Park Service for public park and recreational purposes.

Transfer of jurisdiction over certain property in Fort Lincoln New Town approved. — Pursuant to Resolution 6-410, the "Transfer of Jurisdiction over Part of Parcel 173/142 in Fort Lincoln New Town, S.O. 84-285, Resolution of 1985," effective November 5, 1985, the Council approved the transfer for recreational purposes from the United States Department of Housing and Urban Development to the District of Columbia Redevelopment Land Agency of jurisdiction over part of Parcel 173/142 to Fort Lincoln New Town, as shown on the Surveyor's plat filed under S.O. 84-285.

Encouragement of acquisition of land by federal government. — Pursuant to Resolution 8-189, the "National Park Service — Georgetown Branch Rail Right-of-Way Acquisition Resolution of 1990", effective February 2, 1990, the Council encouraged the federal government to acquire the District of Columbia portion of the abandoned rail right-of-way known as the Georgetown Branch.

Transfer of Jurisdiction over Lot 812 in Square 2939, S.O. 89-221, Resolution of 1990. — Pursuant to Resolution 8-328, effective January 11, 1991, the Council approved the transfer of jurisdiction from the District of Columbia to the National Park Service of the United States Department of the Interior over Lot 812 in Square 2939, bounded by Quackenbush Street, N.W., Georgia Avenue, N.W., Peabody Street, N.W., and 13th Street, N.W., in Ward 4.

Transfer of Jurisdiction over a Portion of U.S. Reservation 360, S.O. 89-245, Resolution of 1990. — Pursuant to Resolution 8-329, effective January 11, 1991, the Council approved the transfer for public street purposes of jurisdiction from the National Park Service of the United States Department of the Interior to the District of Columbia over a portion of

U.S. Reservation 360, at the intersection of Virginia Avenue, N.W., and I Street, N.W., in Ward 2.

Transfer of Jurisdiction over Children's Island, S.O. 92-252, Resolution of 1993. — Pursuant to Resolution 10-91, effective July 30, 1993, the Council approved the transfer from the National Park Service of the United States Department of the Interior to the District of Columbia jurisdiction over property in the Anacostia River in Ward 6 known as National Children's Island, for public park and recreational purposes.

Transfer of Jurisdiction over a Portion of U.S. Reservation 7, S.O. 90-354, Resolution of 1994. — Pursuant to Resolution 10-255, effective January 14, 1994, the Council approved the transfer of jurisdiction, for park purposes, from the District of Columbia to the National Park Service of the United States Department of the Interior over a portion of U.S. Reservation 7, bounded by 4th, E, 5th and F Streets, N.W., in Ward 6.

Transfer of Jurisdiction over a Portion of Square 1183, S.O. 93-81, Resolution of 1994. — Pursuant to Resolution 10-448, effective November 18, 1994, the Council approved the transfer of jurisdiction, for park purposes, from the District of Columbia to the National Park Service of the United States Department of the Interior over a portion of Lot 807 in Square 1182, bounded by M Street, N.W., 34th Street, N.W., the Chesapeake and Ohio Canal, and Francis Scott Key Bridge, N.W., in Ward 2.

Transfer of Jurisdiction over a Portion of U.S. Reservation 515, S.O. 92-101, Resolution of 1994. — Pursuant to Resolution 10-449, effective November 18, 1994, the Council approved the transfer of jurisdiction, for school and recreational purposes, from the National Park Service of the United States Department of the Interior to the District of Columbia over a portion of U.S. Reservation 515, located adjacent to Murch Elementary School at Reno Road, N.W., and Ellicott Street, N.W., in Ward 3.

Cited in District of Columbia Fed'n of Civic Ass'ns v. Volpe, 459 F.2d 1231 (D.C. Cir. 1971), cert. denied, 405 U.S. 1030, 92 S. Ct. 1290, 31 L. Ed. 2d 489 (1972).

§ 8-112. Same — Existing laws unaffected.

Nothing in § 8-111 shall be construed to repeal the provisions of any existing law or laws authorizing the transfer of jurisdiction of certain lands between and among federal and District authorities, but all such laws shall remain in full force and effect. (May 20, 1932, 47 Stat. 162, ch. 197, § 2; 1973 Ed., § 8-116.)

Section references. — This section is referred to in § 5-826.

§ 8-113. Whitehaven Parkway — Adjustment of boundaries at Huidekoper Place.

In order to readjust the boundaries of Whitehaven Parkway at Huidekoper Place and preserve the trees and other natural park values, the Mayor of the District of Columbia is authorized to close, vacate, and abandon for highway and alley purposes the area contained in parcel designated "A," as shown on map filed in the Office of the Surveyor of the District of Columbia and numbered as map 1817, and to transfer said area so closed, vacated, and abandoned to the United States to be under the jurisdiction of the Director of the National Park Service for park purposes. (Apr. 13, 1934, 48 Stat. 575, ch. 114, § 1; 1973 Ed., § 8-117.)

Section references. — This section is referred to in § 8-116.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the

Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-114. Same — Exchange of federal property.

The Mayor of the District of Columbia is authorized to use for street and alley purposes the area comprised within the parcels designated "B," as shown on map filed in the Office of the Surveyor of the District of Columbia and numbered as map 1817; and the Director of the National Park Service is authorized to make the necessary transfer of said land to the District of

Columbia, same to be under the jurisdiction of the said Mayor for street and alley purposes. (Apr. 13, 1934, 48 Stat. 575, ch. 114, § 2; 1973 Ed., § 8-118.)

Cross references. — As to Surveyor, see §§ 1-901 to 1-929.

Section references. — This section is referred to in § 8-116.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers

of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-115. Same — Exchange authorized with property owners.

Upon the dedication by the lawful owner or owners of the land contained in the parcel designated "C" and the transfer by plat as provided herein and/or the conveyance by deed of the land contained in the parcel designated "D," in accordance with map showing said parcels filed in the Office of the Surveyor of the District of Columbia, numbered as map 1817, the said parcel "C" to be dedicated to the District of Columbia for street purposes and the said parcel "D" transferred by plat and/or conveyed by deed to the United States, to be under the jurisdiction of the Director of the National Park Service, then the said Director, with the approval of the Secretary of the Interior, acting for and in behalf of the United States of America, is authorized and directed to transfer by plat as provided herein and/or convey by deed all the land comprised in the parcel designated "E" as shown on said map filed in the Office of the Surveyor of the District of Columbia and numbered as map 1817, said transfer and/or conveyance to be made to the owner or owners making the transfer and/or conveyance of said parcel designated "D" to the United States, such transfers and/or deeds of conveyance to pass title in fee simple to the said land, and any

and all of such transfers when duly executed and consummated shall constitute legal conveyances of the parcels herein described to the parties in interest: Provided, however, that good and sufficient title, satisfactory to the Mayor of the District of Columbia and the Director of the National Park Service, shall be given with respect to the land contained in said parcels "C" and "D," respectively: And provided further, that upon the transfer by plat and/or the conveyance by deed of the said parcel designated "E," as provided herein, the land contained in said parcel shall be subject to assessment and taxation the same in all respects as other private property in the District of Columbia. (Apr. 13, 1934, 48 Stat. 575, ch. 114, § 3; 1973 Ed., § 8-119.)

Cross references. — As to Surveyor, see §§ 1-901 to 1-929.

Section references. — This section is referred to in § 8-116.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers

of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-116. Same — Plats to be prepared.

The Surveyor of the District of Columbia is hereby authorized to prepare the necessary plat or plats showing the parcels of land to be transferred and dedicated in accordance with the provisions of §§ 8-113 to 8-116, with certificates affixed thereon to be signed by the parties in interest making the necessary transfers and dedication, which plat or plats, after being signed by the various interested parties and officials, and approved by the Mayor of the District of Columbia, upon recommendation of the National Capital Planning Commission, shall be recorded upon order of said Mayor in the Office of the Surveyor of the District of Columbia, and said plat or plats and certificates

when so recorded shall constitute a legal dedication and legal transfers of the property described for the purposes designated according to the provisions of §§ 8-113 to 8-116. (Apr. 13, 1934, 48 Stat. 575, ch. 114, § 4; 1973 Ed., § 8-120.)

Cross references. — As to Surveyor, see §§ 1-901 to 1-929.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, 43 Stat. 463, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

§ 8-117. Beach Parkway — Exchange of property to extend authorized.

In order to extend Beach Parkway northward to Western Avenue as provided for by the plans of the National Capital Planning Commission for the park system of the District of Columbia and to preserve the flow of water in Rock Creek Park and to extend West Beach Drive to connect Beach Drive and Rock Creek Park with Western Avenue, the Secretary of the Interior is authorized to convey by and on behalf of the United States of America to the owners of parcel 78/5, or to such party or parties as said owner or owners shall designate, the title of the United States in and to a piece of land containing approximately 55,000 square feet at and near the intersection of Western Avenue and West Beach Drive as proposed in accordance with the plan of the permanent system of highways of the District of Columbia, being a part of reservation 339: Provided, that the owners of said parcel 78/5 shall furnish the United States of America with a good and sufficient title in fee simple, free of all encumbrances, to that piece of land lying along and east of the center line of West Beach Drive as proposed in accordance with the plan of the permanent system of highways of the District of Columbia, and extending east to the creek immediately north of the present north line of United States reservation 432 and extending north to United States reservation 339 and containing approximately 58,500 square feet: Provided further, that the owners of parcel 78/5 dedicate to the District of Columbia for street purposes the west half, 45 feet in width, of West Beach Drive as proposed in accordance with the plan of the permanent system of highways of the District of Columbia, along their property immediately north of the north line of reservation 432. (Aug. 27, 1935, 49 Stat. 881, ch. 741, § 1; 1973 Ed., § 8-121.)

Section references. — This section is referred to in §§ 8-118 and 8-119.

Transfer of functions. — The functions,

powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by

the Act of June 6, 1924, 43 Stat. 463, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

§ 8-118. Same — Dedication and conveyances of exchanged land.

The dedication and transfers provided for in § 8-117 hereof are designated approximately upon plat file numbered 3.9-97 in the files of the National Capital Planning Commission. The dedication and conveyances shall be by proper deed and other instruments containing full legal description by exact survey of the land exchanged and dedicated as provided for by law. (Aug. 27, 1935, 49 Stat. 881, ch. 741, § 2; 1973 Ed., § 8-122.)

Section references. — This section is referred to in § 8-119.

Transfer of functions. — The functions, powers and duties of the National Capital Park and Planning Commission were transferred to

the National Capital Planning Commission by the Act of June 6, 1924, 43 Stat. 463, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

§ 8-119. Same — Power of Secretary of Interior to sell not curtailed.

Nothing in §§ 8-117 to 8-119 shall be construed as curtailing the power of the Secretary of the Interior to sell the remainder of parcel 4 as provided for in Public Law No. 299, 72nd Congress, and should the exchange and dedication as provided for in § 8-117 fail to become effective the Secretary of the Interior is still authorized to sell the entire area of parcel 4 as provided for in that Act. (Aug. 27, 1935, 49 Stat. 882, ch. 741, § 3; 1973 Ed., § 8-123.)

Cross references. — As to sale of public property, see §§ 9-401 to 9-406.

§ 8-120. Squares 612 and 613 made part of park system.

Squares 612 and 613, so called, shall become a part of the park system of the District of Columbia and be under the control of the Director of the National Park Service. (Apr. 17, 1917, 40 Stat. 10, ch. 3; 1973 Ed., § 8-124.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All func-

tions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both

space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the

Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-121. Fort Davis and Fort Dupont Parks.

The public parks on the sites of Fort Davis and Fort Dupont shall become a part of the park system of the District of Columbia and be under the control of the Director of the National Park Service. (June 26, 1912, 37 Stat. 179, ch. 182; 1973 Ed., § 8-125.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings

and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-122. Jurisdiction over reservation 185.

Control and jurisdiction over reservation 185 is vested in the Mayor of the District of Columbia, said reservation to be used by said District as a property yard: Provided, that when in the judgment of the Director of the National Park Service the use of said reservation for park purposes is desirable, the Mayor of the District of Columbia, upon his request, is authorized and directed to retransfer said reservation to his jurisdiction. (May 18, 1910, 36 Stat. 383, ch. 248; 1973 Ed., § 8-126.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the

Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949,

63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-123. Use of spaces or reservations for widening roadways.

When, in the judgment of the Mayor of the District of Columbia, the public necessity or convenience requires them to enter upon any of the spaces or reservations under the jurisdiction of the Director of the National Park Service for the purpose of widening the roadway of any street or avenue adjacent thereto or to establish sidewalks along the same, the Director of the National Park Service is authorized to grant the necessary permission upon the application of the Mayor. (July 1, 1898, 30 Stat. 570, ch. 543, § 4; 1973 Ed., § 8-127.)

Cross references. — As to jurisdiction and control of streets, see § 7-102.

Section references. — This section is referred to in §§ 8-129, 8-137, and 8-138.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the

Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in govern-

ment-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the

Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-124. Use of public grounds for playgrounds.

The Director of the National Park Service may authorize the temporary use of the Monument Grounds or ground south of the Executive Mansion or other reservations in the District of Columbia for playgrounds for children and adults, under regulations to be prescribed by him. (Mar. 3, 1903, 32 Stat. 1122, ch. 1007; 1973 Ed., § 8-128.)

Cross references. — As to maintenance and improvement of playgrounds, see § 8-224.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all func-

tions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-125. Licenses for temporary structures on reservations used as playgrounds.

The Director of the National Park Service is authorized to grant licenses, revocable by him, without compensation, to erect temporary structures upon reservations used as children's playgrounds, under such regulations as he may impose. (May 27, 1908, 35 Stat. 355, ch. 200, § 1; 1973 Ed., § 8-129.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All func-

tions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both

space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the

Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-126. Part of Washington Aqueduct may be transferred for playground purposes.

The Chief of Engineers is authorized to transfer for playground purposes the possession, use, and control of all that portion of the land of the Washington Aqueduct adjacent to the Champlain Avenue pumping station and lying outside of the fence around said pumping station existing on August 31, 1918, to the control and jurisdiction of the Mayor of the District of Columbia. Nothing herein shall be construed as affecting the superintendence and control of the Secretary of the Army over the Washington Aqueduct, its rights, appurtenances, and fixtures connected with the same and over appropriations and expenditures therefor as now provided by law. (Aug. 31, 1918, 40 Stat. 951, ch. 164, § 1; 1973 Ed., § 8-130.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 8-127. Authority to make rules and regulations for playgrounds and recreation centers.

Authority is granted the Mayor of the District of Columbia to make rules and regulations governing the conduct of the municipal playgrounds and recreation centers coming under his control. (Mar. 3, 1915, 38 Stat. 905, ch. 80; 1973 Ed., § 8-131.)

Cross references. — As to rules and regulations for the protection of life, health, and property, see § 1-319.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 8-128. When authorization by Congress needed for building.

On and after August 24, 1912, there shall not be erected on any reservation, park, or public grounds, of the United States within the District of Columbia, any building or structure without express authority of Congress. (Aug. 24, 1912, 37 Stat. 444, ch. 355, § 1; 1973 Ed., § 8-133.)

Cited in *Quinn v. Dougherty*, 30 F.2d 749 (D.C. Cir. 1929); *Reichelderfer v. Quinn*, 287 U.S. 315, 53 S. Ct. 177, 77 L. Ed. 331 (1932).

§ 8-129. Letters of transfer and acceptance deemed authority for change in maps and for record.

When in accordance with law or mutual legal agreement, spaces or portions of public land are transferred from the jurisdiction of the Director of the National Park Service, as established by §§ 5-204, 8-104, 8-106, 8-123, 8-129 and 8-137, to that of the Mayor of the District of Columbia, or vice versa, the letters exchanged between them of transfer and acceptance shall be sufficient authority for the necessary change in the official maps and for record when necessary. (July 1, 1898, 30 Stat. 570, ch. 543, § 5; 1973 Ed., § 8-135.)

Section references. — This section is referred to in §§ 8-137 and 8-138.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see *Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization* in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see *Reorganization Plans* in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the

Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-130. Transfer of jurisdiction — Reservation 32.

The jurisdiction and control of public reservation numbered 32, bounded by Pennsylvania Avenue, Fourteenth Street, E Street, and Thirteen-and-a-half Street Northwest, in the City of Washington, District of Columbia, is hereby transferred from the Chief of Engineers of the United States Army to the Mayor of the District of Columbia, in order to provide a suitable approach to the new District building to be located fronting said reservation. (Feb. 10, 1904, 33 Stat. 12, ch. 155; 1973 Ed., § 8-136.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 8-131. Same — Reservation 290.

The action of the Mayor of the District of Columbia in locating a pound and stable for the Department of Human Services on reservation numbered 290, located along James Creek Canal at the intersection of South Capitol and I Streets Southeast, under the authorization contained in the District Appropriation Act approved March 2, 1911, is ratified and confirmed, and the jurisdiction and control over said reservation is transferred to the Mayor of the District of Columbia; and the title to said reservation shall be in the name of the District of Columbia. (Mar. 4, 1913, 37 Stat. 962, ch. 150; 1973 Ed., § 8-137.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

Health Department abolished. — The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control

of the Director of Public Health consisting of members as prescribed in the D. C. Code. Prior to redesignation, the Ord. abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia

by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 8-132. Same — Reservation 8.

The jurisdiction and control of such portion of public reservation numbered 8 as may be required for the location and operation of a public convenience station and approaches thereto is hereby transferred from the Chief of Engineers of the United States Army to the Mayor of the District of Columbia, such transfer to take effect from the date of notice by said Mayor to the Chief of Engineers of the United States Army of the portion of said reservation selected, and the Council of the District of Columbia is further authorized to make all necessary rules and regulations for the management of said station and fix the charges to be made for the use thereof. (May 26, 1908, 35 Stat. 286, ch. 198; 1973 Ed., § 8-138.)

Cross references. — As to rules and regulations for protection of life, health, and property, see § 1-319.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(182) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 8-133. Public convenience stations — Establishment; location; control.

(a) The Mayor of the District of Columbia is authorized and empowered to construct and establish, in the City of Washington, District of Columbia, 2 public convenience stations, each of the same to afford accommodations for 20 males and 10 females.

(b) The said public convenience stations shall be located on public space to be selected by the said Mayor of the District of Columbia. And the jurisdiction and control of such portion of any public reservation so selected as shall be required for the location of such stations and their approaches is hereby transferred from the Chief of Engineers of the United States Army to the Mayor of the District of Columbia, such transfer to take effect from the date of notice by the said Mayor to the Chief of Engineers of the United States Army

of the location of sites of such stations. (Mar. 3, 1905, 33 Stat. 984, ch. 1414, §§ 1, 2; 1973 Ed., § 8-139.)

Section references. — This section is referred to in § 8-134.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 8-134. Same — Authority to make rules, regulations, and charges.

Upon the construction and establishment of the public convenience stations referred to in § 8-133 the Council of the District of Columbia is further authorized and empowered to make all necessary rules and regulations for the management of the same, as well as to fix the charge, if any, to be made for the use of these conveniences. (Mar. 3, 1905, 33 Stat. 984, ch. 1414, § 3; 1973 Ed., § 8-140.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(183) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 8-135. Part of reservation 13 transferred for use as indigent burial ground.

All of that portion of reservation 13 lying 600 feet east of the east curb line of Nineteenth Street east and south of the south line of B Street south is transferred to the control of the Mayor of the District of Columbia for the purpose of the burial of the indigent dead of the District, to be an addition to the burial grounds of the Washington Asylum. (Aug. 6, 1890, 26 Stat. 306, ch. 724; 1973 Ed., § 8-141.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 8-136. Site of former Georgetown Reservoir.

The site of the former Georgetown Reservoir (Wisconsin Avenue, between R Street and Brown Place, Northwest) is transferred to the jurisdiction and control of the Mayor of the District of Columbia. (Feb. 23, 1931, 46 Stat. 1381, ch. 282; 1973 Ed., § 8-142.)

Cross references. — As to rules and regulations for protection of life, health, and property, see § 1-319.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 8-137. Authority to make rules and regulations for care of public grounds — Generally.

The Director of the National Park Service and the said Mayor of the District of Columbia are authorized to make all needful rules and regulations for the government and proper care of all the public grounds placed by §§ 5-204, 8-104, 8-106, 8-123, 8-129 and 8-137, under their respective charge and control; and to annex to such rules and regulations such reasonable penalties as will secure their enforcement. (July 1, 1898, 30 Stat. 571, ch. 543, § 6; 1973 Ed., § 8-143.)

Cross references. — As to control of land, buildings and facilities, see §§ 8-222 to 8-224.

Section references. — This section is referred to in §§ 8-129, 8-138, and 8-148.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R.

2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Adminis-

trator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

Indecent exposure. — An intentional indecent exposure in a public park which is likely to be observed by others is a criminal offense. *Davenport v. United States*, App. D.C., 56 A.2d 851 (1948).

§ 8-137.1. Authority of the Director of the Department of Recreation and Parks to regulate District parks.

(a) The Council finds that, in order to protect the public health and safety, environmental and scenic values, natural or cultural resources, equitable allocations and use of District park facilities, and to alleviate conflict among park visitors, it is necessary to implement management responsibilities for District parks.

(b) The Director of the Department may:

- (1) Establish a reasonable schedule of hours for the operation of parks;
- (2) Impose limits, conditions, and restrictions on the public use of parks;
- (3) Close all or a portion of a park area to public use or to a specific use or activity; or

(4) Terminate a limit, condition, restriction or any other decision made pursuant to this subsection.

(c)(1) Except in emergency situations, the Director of the Department shall inform the public of closures, designations, use restrictions or conditions, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the park area, adversely affect the park's natural, aesthetic, scenic or cultural values, require a long-term or significant modification in the resource management objectives of the unit, or is of a highly controversial nature, by publishing such changes as rulemaking in the District of Columbia Register and a major Washington, D.C. metropolitan newspaper.

(2) Except in emergency situations, prior to implementing or terminating a restriction, condition, public use limit or closure, the Director of the Department shall prepare a written determination justifying the action. That determination shall set forth the reasons why the restriction, condition, public use limit or closure authorized by subsection (b) of this section has been established, and an explanation of why less restrictive measures will not

suffice, or in the case of a termination of a restriction, condition, public use limit or closure previously established under subsection (b) of this section, a determination as to why the restriction is no longer necessary and a finding that the termination will not adversely impact park resources. This determination shall be available to the public upon request.

(d) To implement a public use limit, the Director of the Department may establish a permit, registration, or reservation system. Permits shall be issued in accordance with, or in exception to, the criteria in subsection (b) of this section. Applications for use permits may be sent to the Director of the Department, 30 days in advance of the event, by writing a letter which describes the event including the date, day, starting and ending time of the event, a description of what the event will be, and approximately how many people are expected.

(e) Violating a closure, designation, use or activity restriction or condition, schedule of visiting hours, or public use limit is prohibited. The District of Columbia Metropolitan Police Department may enforce the provisions contained in subsection (b) of this section. Any person violating the provisions of subsection (b) of this section may be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days, or both. (July 1, 1898, ch. 543, § 6a, as added Mar. 16, 1995, D.C. Law 10-226, § 2, 42 DCR 1.)

Effect of amendments. — D.C. Law 10-226 added this section.

Legislative history of Law 10-226. — Law 10-226, the "Parks Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-443, which was referred to the Committee on Public Services and Youth Affairs. The Bill was adopted on first and second readings

on November 1, 1994, and December 6, 1994, respectively. Deemed approved without the signature of the Mayor on December 28, 1994, it was assigned Act No. 10-367 and transmitted to both Houses of Congress for its review. D.C. Law 10-226 became effective on March 16, 1995.

§ 8-138. Same — Extension of sidewalks and carriageways.

The application of the rules and regulations prescribed prior to March 4, 1909, or that may be thereafter prescribed by the Director of the National Park Service, under the authority granted by §§ 5-204, 8-104, 8-106, 8-123, 8-129 and 8-137, for the government and proper care of all public grounds placed by that act under the charge and control of the said Director of the National Park Service, is hereby extended to cover the sidewalks around the public grounds and the carriageways of such streets as lie between and separate the said public grounds. (Mar. 4, 1909, 35 Stat. 994, ch. 299, § 1; 1973 Ed., § 8-144.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, trans-

ferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings

and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

Tour service immune from District's li-

censing requirement. — The Secretary of the Interior has the exclusive authority to regulate interpretive tour service operated under a contract with the Department of the Interior; the service therefore is immune from the enforcement of the District of Columbia licensing requirements. *District of Columbia v. Landmark Servs., Inc.*, 416 F. Supp. 559 (D.D.C. 1976), modified sub nom. *United States v. District of Columbia*, 571 F.2d 651 (D.C. Cir. 1977).

Certificate of convenience and necessity is not required of a concessionaire under a contract with the Secretary of the Interior to conduct bus tours of the Capitol Mall. *Universal Interpretive Shuttle Corp. v. Washington Metro. Area Transit Comm'n*, 393 U.S. 186, 89 S. Ct. 354, 21 L. Ed. 2d 334 (1968).

Cited in *Brownlow v. O'Donoghue Bros.*, 276 F. 636 (D.C. Cir. 1921).

§ 8-139. Public spaces resulting from filling of canals part of park system; exceptions.

All public spaces resulting from the filling of canals in the original City of Washington, except such portions as are included in the navy yard or in actual use as roadways and sidewalks, and except the portions assigned by law to the District of Columbia for use as a property yard and the location of a sewerage pumping station, respectively, are placed under the jurisdiction of the Director of the National Park Service and shall be laid out as reservations as a part of the park system of the District of Columbia. (Aug. 1, 1914, 38 Stat. 633, ch. 223, § 1; 1973 Ed., § 8-145.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings

and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-140. Rock Creek Park — Establishment.

The tract of land lying on both sides of Rock Creek, beginning at Klinge Ford Bridge, and running northwardly, following the course of said creek, acquired

under the Act of September 27, 1890, Chapter 1001, shall be perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States, to be known by the name of Rock Creek Park. (Sept. 27, 1890, 26 Stat. 492, ch. 1001, § 1; 1973 Ed., § 8-146.)

Cross references. — As to regulations for buildings abutting or adjoining Rock Creek Park, see § 5-410.

Section references. — This section is referred to in § 8-142.

Cited in *Shoemaker v. United States*, 147 U.S. 282, 13 S. Ct. 361, 37 L. Ed. 170 (1893); *Wilson v. Lambert*, 168 U.S. 611, 18 S. Ct. 217, 42 L. Ed. 599 (1898).

§ 8-141. Same — Area.

The total area of lands finally to be acquired for said parkway shall not exceed the area and parcels described and delineated on map numbered 2, contained in House Document Numbered 1114 of the 64th Congress, First Session. (July 1, 1916, 39 Stat. 282, ch. 209, § 1; Mar. 4, 1921, 41 Stat. 1382, ch. 161, § 1; 1973 Ed., § 8-147.)

Cross references. — As to parkway connecting Potomac Park with Zoological and Rock Creek Parks, see §§ 8-152 and 8-153.

Section references. — This section is referred to in § 8-154.

§ 8-142. Same — Control; duties of Director; regulations.

The public park authorized and established by § 8-140 shall be a part of the park system of the District of Columbia, defined by § 8-104 and shall be under the control of the Director of the National Park Service, whose duty it shall be, as soon as practicable, to lay out and prepare roadways and bridle paths, to be used for driving and for horseback riding, respectively, and footways for pedestrians; and whose duty it shall also be to make and publish such regulations as he deems necessary and proper for the care and management of the same. Such regulations shall provide for the preservation from injury or spoilation of all timber, animals, or curiosities within said park, and their retention in their natural condition, as nearly as possible. (Sept. 27, 1890, 26 Stat. 495, ch. 1001, § 7; July 1, 1918, 40 Stat. 650, ch. 113, § 1; 1973 Ed., § 8-148.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all

agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain ex-

ceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of

1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-143. Same — Leasing authorized; disposition of proceeds.

The Director of the National Park Service is authorized to rent or lease, for periods not exceeding 1 year at any one time, the buildings and arable ground in Rock Creek Park, for such rental as shall seem proper to the Director, and deposit the proceeds of such rents or leases with the Collector of Taxes to the credit of the General Fund of the District of Columbia. (Aug. 7, 1894, 28 Stat. 252, ch. 232; July 1, 1918, 40 Stat. 650, ch. 113, § 1; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; 1973 Ed., § 8-149.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to

the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

§ 8-144. Same — Acceptance of dedicated property authorized.

The Director of the National Park Service is authorized to accept dedications of land for the purpose of adding to Rock Creek Park, without expense to the United States or the District of Columbia, and such land, when accepted, shall become a part of said park and be under the jurisdiction of the said Director. (Apr. 27, 1904, 33 Stat. 376, ch. 1628; 1973 Ed., § 8-150.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings

and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-145. Same — Protection of Rock Creek and its tributaries.

In order to protect Rock Creek and its tributaries, none of the moneys appropriated on or before June 7, 1924, for the opening, widening, or extending of any street, avenue, or highway in the District of Columbia shall be expended for the opening, widening, or extension of any street, avenue, or highway which shall or may in the judgment of the Mayor of the District of Columbia permanently injure or diminish the existing flow of Rock Creek or any of its tributaries, nor shall permission so to do at private expense be granted to any private person or corporation except by the joint consent and approval of the Mayor of the District of Columbia and the Director of the National Park Service. (June 7, 1924, 43 Stat. 574, ch. 302; 1973 Ed., § 8-151.)

Cross references. — As to jurisdiction and control of streets, see § 7-102.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of

the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-146. Piney Branch Parkway.

The Piney Branch Parkway is made a part of the park system of the District of Columbia defined by § 8-104. (July 1, 1918, 40 Stat. 650, ch. 113, § 1; 1973 Ed., § 8-152.)

§ 8-147. Potomac Park — Establishment.

The entire reclaimed area formerly known as the Potomac Flats, together with the tidal reservoirs, are made and declared a public park, under the name of the Potomac Park, and to be forever held and used as a park for the recreation and pleasure of the people. (Mar. 3, 1897, 29 Stat. 624, ch. 375; 1973 Ed., § 8-153.)

Cross references. — As to regulations for buildings abutting or adjoining Potomac Park, see § 5-410.

Section references. — This section is referred to in § 8-150.

§ 8-148. Same — Control.

The Potomac Park is made a part of the park system of the District of Columbia under the exclusive charge and control of the Director of the National Park Service and subject to the provisions of § 8-137. (Aug. 1, 1914, 38 Stat. 634, ch. 223, § 1; 1973 Ed., § 8-154.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, trans-

ferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings

and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with re-

spect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-149. Same — Restriction on construction of lagoon, etc., or speedway.

No part of any money appropriated in any act shall be expended for or toward the construction of any lagoon, or other artificial body of water, or speedway, on any portion of said Park unless specifically authorized by Congress. (Aug. 1, 1914, 38 Stat. 634, ch. 223, § 1; 1973 Ed., § 8-155.)

§ 8-150. Same — Temporary occupancy by Department of Agriculture.

The Director of the National Park Service is authorized to grant permission to the Department of Agriculture for the temporary occupation of such area or areas of Potomac Park, not exceeding a total of 75 acres in extent, as may not be needed in any one season for the reclamation or park improvement, the said areas to be used by the Department of Agriculture as testing grounds: Provided, that nothing herein contained shall be construed to change the essential character of the lands so used, which lands shall continue to be a public park, as provided in § 8-147: And provided further, that said area or areas shall be vacated by the Department of Agriculture at the close of any season upon the request of the said Director: And provided further, that the entire Park shall remain under the charge of the said Director. (Mar. 3, 1899, 30 Stat. 1378, ch. 458, § 2; 1973 Ed., § 8-156.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings

and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-151. Same — Licenses for boathouses on banks of tidal reservoir.

Licenses may be granted for the erection of boathouses along the banks of the tidal reservoir on the Potomac River fronting Potomac Park, under regulations to be prescribed by the Director of the National Park Service, and all such licenses granted under this authority shall be revocable, without compensation, by the Secretary of the Army. (May 27, 1908, 35 Stat. 355, ch. 200, § 1; 1973 Ed., § 8-157.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings

and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-152. Parkway connecting Potomac Park with Zoological and Rock Creek Parks — Acquisition of land authorized; reimbursement of costs.

For the purpose of preventing the pollution and obstruction of Rock Creek and of connecting Potomac Park with the Zoological Park and Rock Creek Park, a commission, to be composed of the Secretary of the Treasury, the Secretary of Defense, and the Secretary of Agriculture, is authorized and directed to acquire, by purchase, condemnation or otherwise, such land and premises as were not, on March 4, 1913, the property of the United States in the District of Columbia shown on the map on file in the Office of the Mayor of the District of Columbia, dated May 17, 1911, and lying on both sides of Rock Creek, including such portion of the creek bed as may be in private ownership, between the Zoological Park and Potomac Park; and the sum of \$1,300,000 is hereby authorized to be expended toward the acquirement of such lands. All lands belonging, on March 4, 1913, to the United States or to the District of Columbia lying within the exterior boundaries of the land to be acquired by this section as shown and designated on said map are appropriated to and made a part of the parkway herein authorized to be acquired. One-half of the cost of the said lands shall be reimbursed to the Treasury of the United States out of the revenues of the District of Columbia in 8 equal annual installments,

with interest at the rate of 3 per centum per annum, upon the deferred payments. (Mar. 4, 1913, 37 Stat. 885, ch. 147, § 22; 1973 Ed., § 8-158.)

Cross references. — As to regulations for buildings abutting or adjoining certain parks and parkways, see § 5-410.

Section references. — This section is referred to in §§ 8-153 and 8-154.

References in text. — The Secretary of War was replaced by the Secretary of Defense by the Act of September 7, 1962, 76 Stat. 517, Pub. L. 87-651, § 202.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Lands reincluded within parkway. — Act of September 1, 1916, 39 Stat. 689, ch. 433, provided certain described lands were reincluded as a part of the connecting parkway between Potomac Park, the Zoological Park and Rock Creek Park.

§ 8-153. Same — Taking lines authorized to be extended.

The authority of the commission created by § 8-152 is extended to include the acquisition of such additional lands and premises lying adjacent to or in the immediate vicinity of the taking lines as shown on the map on file in the Office of the Executive and Disbursing Officer and known as the map of the Rock Creek and Potomac Parkway (in 4 sheets) dated May, 1923, as may in its discretion, subject to the approval of the Commission on the Arts and Humanities, be necessary for the best development of the connecting parkway between Rock Creek Park, the Zoological Park, and Potomac Park: Provided, that the total sum expended for lands needed for this parkway shall not exceed that authorized by § 8-152, and amended by the Second Deficiency Act of May 5, 1926: Provided further, that the commission may exclude such lands and premises, not owned by the United States on March 2, 1929, but within the taking lines heretofore authorized for the said Parkway, as may in its discretion, and upon the advice of the Commission on the Arts and Humanities, be found not to be desirable or necessary for the connecting parkway. (Mar. 2, 1929, 45 Stat. 1523, ch. 542; 1973 Ed., § 8-159.)

References in text. — The Commission of Fine Arts was replaced by the Commission on the Arts and Humanities by Commissioner's Order No. 74-4, dated January 7, 1974.

§ 8-154. Connecting parkway to be part of park system.

When the lands authorized to be purchased pursuant to §§ 8-141 and 8-152, for a connecting parkway between Potomac Park, the Zoological Park, and Rock Creek Park, shall have been acquired, said lands shall be a part of the park system of the District of Columbia subject to the provisions of § 8-104. (July 1, 1916, 39 Stat. 282, ch. 209; 1973 Ed., § 8-160.)

Acquisition of land authorized. — Act of February 28, 1923, 42 Stat. 1366, ch. 148, provided authorization for the acquisition of certain land described in that Act.

§ 8-155. Anacostia Park.

The entire area of the Anacostia River and Flats reclaimed and to be reclaimed from the mouth of the river to the District line is made and declared a part of the park system of the District of Columbia and designated Anacostia Park. (Aug. 31, 1918, 40 Stat. 950, ch. 164, § 1; 1973 Ed., § 8-161.)

Tree nursery. — Act of May 7, 1926, 44 Stat. 405, ch. 251, transferred to the jurisdiction of the District of Columbia a certain portion of Anacostia Park for use as a tree nursery.

§ 8-156. Glover Parkway and Children's Playground — Acceptance of land authorized.

The Council of the District of Columbia is authorized and directed to accept the land lying along Foundry Branch between Massachusetts Avenue and Reservoir Street, dedicated by Charles C. Glover for park purposes, and containing approximately seventy-seven and one-half acres, as more accurately shown on map number 1003, filed in the Office of the Surveyor of the District of Columbia, which tract of land shall be known as "The Glover Parkway and Children's Playground"; and the Council is further authorized to accept any dedications of additional land contiguous to this tract for park purposes. (June 6, 1924, 43 Stat. 464, ch. 271, § 1; 1973 Ed., § 8-162.)

Cross references. — As to Surveyor, see §§ 1-901 to 1-929.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (184) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 8-157. Same — Part of park system.

The Glover Parkway and Children's Playground and additions thereto, when acquired, shall become a part of the park system of the District of Columbia. (June 6, 1924, 43 Stat. 464, ch. 271, § 2; 1973 Ed., § 8-163.)

§ 8-158. Theodore Roosevelt Island — Maintenance, administration and development.

The island, known as Theodore Roosevelt Island, shall be maintained and administered by the Director of the National Park Service as a natural park for the recreation and enjoyment of the public: Provided, that no general plan for

the development of the island be adopted without the approval of the Theodore Roosevelt Association; and so long as this Association remains in existence, no development, inconsistent with this plan, be executed without the Association's consent. (May 21, 1932, 47 Stat. 163, ch. 200, § 1; Feb. 11, 1933, 47 Stat. 799, ch. 48, § 1; May 21, 1953, 67 Stat. 27, ch. 63, § 2; 1973 Ed., § 8-164.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings

and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-159. Same — Means of access; appropriations.

The Director of the National Park Service is authorized to provide suitable means of access to and upon the said Theodore Roosevelt Island as appropriations are made available from time to time and subject to the approval of the National Capital Planning Commission; and the appropriations needed for such construction and annually for the care, maintenance, and improvement of the said lands and improvements, are hereby authorized to be made from any funds not otherwise appropriated from the Treasury of the United States. (May 21, 1932, 47 Stat. 164, ch. 200, § 2; Feb. 11, 1933, 47 Stat. 799, ch. 48, § 1; 1973 Ed., § 8-165.)

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all func-

tions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of

1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

The functions, powers and duties of the National Capital Park and Planning Commission

were transferred to the National Capital Planning Commission by the Act of June 6, 1924, 43 Stat. 463, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

§ 8-160. Same — Structures authorized; appropriations.

That the Secretary of the Interior shall erect on Theodore Roosevelt Island such monument or memorial to the memory of Theodore Roosevelt, and related structures, as may be approved by the living children of Theodore Roosevelt, the Theodore Roosevelt Association, the Commission on the Arts and Humanities, and the National Capital Planning Commission. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. (May 21, 1932, 47 Stat. 164, ch. 200, § 3; Feb. 11, 1933, 47 Stat. 799, ch. 48, § 1; May 21, 1953, 67 Stat. 27, ch. 63, § 2; Sept. 13, 1960, 74 Stat. 904, Pub. L. 86-764; 1973 Ed., § 8-166.)

References in text. — The Commission of the Arts and Humanities by Commissioner's Fine Arts was replaced by the Commission on Order No. 74-4, dated January 7, 1974.

§ 8-161. Same — Designation.

In all public documents, records, and maps of the United States in which such island is designated or referred to it shall be designated as "Theodore Roosevelt Island." (Feb. 11, 1933, 47 Stat. 799, ch. 48, § 2; 1973 Ed., § 8-167.)

§ 8-162. Public bathing beach authorized.

The Mayor of the District of Columbia is hereby authorized and permitted to construct a beach and dressing houses upon the east shore of the tidal reservoir against the Washington Monument Grounds, and to maintain the same for the purpose of free public bathing, under such regulations as the Council of the District of Columbia shall deem to be for the public welfare; and the Secretary of the Army is requested to permit such use of the public domain as may be required to accomplish the objects above set forth. (Sept. 26, 1890, 26 Stat. 490, ch. 949; 1973 Ed., § 8-168.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(185) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 8-163. Bathing pools and beaches — Construction authorized; appropriations.

The Director of the National Park Service is authorized and directed to locate and construct in the District of Columbia, subject to the approval of the National Capital Planning Commission, and after consultation with the Commission on the Arts and Humanities, as appropriations shall be provided therefor, artificial bathing pools or beaches, not exceeding 6 in number, with suitable buildings, shower baths, lockers, provisions for the use of filtered water, purification of the water, and all things necessary for the proper conduct of such pools or beaches, and to conduct and maintain the same. The cost of construction of any of these pools or beaches, with buildings and equipment, shall not exceed \$150,000 each, and the appropriation of the sums necessary for the purposes named is hereby authorized to be paid in like manner as other appropriations for the expenses of the government of the District of Columbia. (May 4, 1926, 44 Stat. 394, ch. 234; Feb. 28, 1929, 45 Stat. 1412, ch. 384, § 1; 1973 Ed., § 8-169.)

Section references. — This section is referred to in § 8-165.

References in text. — The Commission of Fine Arts was replaced by the Commission on the Arts and Humanities by Commissioner's Order No. 74-4, dated January 7, 1974.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings

and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, 43 Stat. 463, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

§ 8-164. Same — Possession, control, and maintenance; fees.

The Director of the National Park Service may, in the interest of economy and good administration, with the consent of the Mayor of the District of Columbia, transfer for such period as he shall determine, to said Mayor the possession, control, and maintenance of any of said bathing pools or beaches. Otherwise they shall be operated and maintained by the said Director of the National Park Service and in either case the official conducting any bathing

pool or beach is hereby authorized to charge and collect a reasonable fee for the use and enjoyment of such pool or beach, such fees to be paid weekly to the Collector of Taxes of the District of Columbia for deposit in the treasury to the credit of the District of Columbia. (May 4, 1926, 44 Stat. 394, ch. 234; Feb. 28, 1929, 45 Stat. 1412, ch. 384, § 2; 1973 Ed., § 8-170.)

Cross references. — As to comprehensive recreation program, see § 8-212.

As to disposition of fees collected by District of Columbia, see § 47-127.

Section references. — This section is referred to in § 8-165.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public

Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and

Revenue by Commissioner's Order No. 69-96,
dated March 7, 1969.

§ 8-165. Same — Operation; disposition of moneys received.

The Director of the National Park Service in his discretion, is authorized to operate, through the Public Building Service of the General Services Administration, bathing pools under his jurisdiction, and thereupon there may be deposited in the treasury under the special fund to the credit of said association moneys received for the operation of such pools and be there available for the purposes of said special fund and this shall be a compliance with the provisions of §§ 8-163 and 8-164. (July 3, 1930, 46 Stat. 1007, ch. 853; 1973 Ed., § 8-171.)

Cross references. — As to comprehensive recreation program, see § 8-212.

As to disposition of fees collected by District of Columbia, see § 47-127.

Transfer of functions. — The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303 (b) of Reorganization Plan No. I, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of all officers of the Department of the Interior (including the Director of the National Park Service) and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of

the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Federal Works Agency, the Office of Federal Works Administrator, the Office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by § 103(b) of said Act. All functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by § 1 of 1950 Reorganization Plan No. 18, 15 F.R. 3177, 64 Stat. 1270.

§ 8-166. Division of Park Services.

(a) Pursuant to § 1-227(b), jurisdiction over all public space park areas, maintained by the Department of Public Works before July 1, 1989, shall be transferred to and become the responsibility of the Department of Recreation. For purposes of this section, the phrase "all public space park areas" ("parks") includes all parcels, lots, squares of land, green spaces, and monuments located within and owned or maintained by the District of Columbia government and not owned or maintained by the federal government.

(b) The Department of Public Works, Division of Roadside and Parks Maintenance, shall retain jurisdiction over, and responsibility for maintenance, landscaping, beautifying, promoting, and regulation of roadsides, interstate gateways, and cloverleaves.

(c) The Facility Maintenance Administration within the Department of Recreation shall have jurisdiction over, and be responsible for the maintenance

nance, landscaping, beautifying, promotion, and regulation of the parks transferred pursuant to this section.

(d) Funds and existing continuing full-time employees and positions authorized for the Department of Public Works, Division of Roadside and Parks Maintenance (Responsibility Center 4044) within the Public Space Administration (Control Center 40) in the Fiscal Year 1989 Budget for the District of Columbia and allocated for the maintenance, landscaping, beautifying, promotion, and regulation of parks transferred pursuant to this section, shall be transferred to the Department of Recreation, Facility Maintenance Administration (Responsibility Center 2700) within Recreation Operations (Control Center 20).

(e) The Facility Maintenance Administration (Responsibility Center 2700) within Recreation Operations (Control Center 20) is renamed the Parks and Facility Maintenance Administration.

(f) The Department of Recreation is renamed the Department of Recreation and Parks. (Mar. 16, 1989, D.C. Law 7-209, § 2, 36 DCR 476.)

Legislative history of Law 7-209. — Law 7-209, the "Division of Park Services Act of 1988," was introduced in Council and assigned Bill No. 7-300, which was referred to the Committee on Public Works. The Bill was adopted

on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-280 and transmitted to both Houses of Congress for its review.

CHAPTER 2. RECREATION BOARD.

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*Subchapter I. Membership of the Recreation Board.***§ 8-201. Creation.**

There is hereby created in and for the District of Columbia a Recreation Board hereinafter referred to as "the Board." (Apr. 29, 1942, 56 Stat. 261, ch. 265; 1973 Ed., § 8-201.)

Cross references. — As to park and playground system, see §§ 8-101 and 8-102.

Establishment — D.C. Advisory Committee on Recreation & Parks. — See Mayor's Order 90-191, December 13, 1990.

Recreation Board abolished. — The Recreation Board, together with the position of Superintendent of Recreation, was abolished and the functions of both the Board and the Superintendent were transferred to the Commissioner of the District of Columbia by Reor-

ganization Plan No. 3 of 1968. Organization Order No. 10, dated June 27, 1968, established a Department of Recreation, under the direction and control of the Commissioner, headed by a Director of Recreation.

Jurisdiction to determine policy questions. — The Board has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp v. Recreation Bd.*, 104 F. Supp. 10 (D.D.C. 1952).

§ 8-202. Composition; selection; tenure; qualifications.

The Board shall consist of 7 members as follows: a representative of the Mayor of the District of Columbia selected by the Mayor; a representative of the Board of Education selected by that Board; the Superintendent of the National Capital Parks ex-officio; and 4 members, who shall have been for 5 years immediately preceding their selection bona fide residents of the District of Columbia, appointed by the Mayor of the District of Columbia for a term of 4 years each, except the original appointments which shall be for terms of 1, 2, 3, and 4 years, respectively. The appointment of the 4 citizens shall be without

regard to race, sex, or creed, and shall take judicious account of the various parent, civic, and other organizations through which residents of the District voice their civic wishes and advance the common welfare. The 2 members of the Board representing the Mayor and the Board of Education shall be designated annually by their respective agencies. (Apr. 29, 1942, 56 Stat. 261, ch. 265, art. I, § 1; 1973 Ed., § 8-202.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Recreation Board abolished. — See note to § 8-201.

Jurisdiction to determine policy questions. — The Board has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp v. Recreation Bd.*, 104 F. Supp. 10 (D.D.C. 1952).

§ 8-203. Liability.

The members of the Board shall not be personally liable in damages for any official action of the said Board performed in good faith, nor shall any member of said Board be liable for any costs that may be taxed against them or the Board on account of any such official action; but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits brought against the municipality; nor shall the said Board or any of its members be required to give any supersedeas bond or security for costs or damages on any appeal whatever. (Apr. 29, 1942, 56 Stat. 261, ch. 265, art. I, § 2; 1973 Ed., § 8-203.)

Recreation Board abolished. — See note to § 8-201.

§ 8-204. Vacancies.

Vacancies shall be filled for the unexpired term by the agency which made the original selection. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. I, § 3; 1973 Ed., § 8-204.)

§ 8-205. Compensation.

The members of the Board shall serve without compensation for such service. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. I, § 4; 1973 Ed., § 8-205.)

Recreation Board abolished. — See note to § 8-201.

§ 8-206. Officers; rules and regulations.

The Board shall select from among its citizen membership its Chairman and its Secretary and is hereby authorized and empowered to adopt all necessary rules and regulations for the conduct of its business. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. I, § 5; 1973 Ed., § 8-206.)

Recreation Board abolished. — See note to § 8-201.

§ 8-207. Meetings.

The Board shall hold stated meetings and such additional meetings as they may from time to time deem necessary. All meetings of the Board shall be open to the public. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. I, § 6; 1973 Ed., § 8-207.)

Recreation Board abolished. — See note to § 8-201.

Subchapter II. Functions and Administrative Responsibilities.

§ 8-211. Determination of general policy; supervision of expenditures.

The Board shall determine all questions of general policy relating to public recreation in and for the District of Columbia, and shall supervise and direct expenditure of all appropriations and/or other funds made available to the Board. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. II, § 1; 1973 Ed., § 8-208.)

Recreation Board abolished. — See note to § 8-201.

Jurisdiction to determine policy questions. — The Board has statutory jurisdiction to determine all questions of policy with respect

to playgrounds under its control. *Camp v. Recreation Bd.*, 104 F. Supp. 10 (D.D.C. 1952).

Cited in *Burner v. Washington*, 399 F. Supp. 44 (D.D.C. 1975).

§ 8-212. Superintendent of Recreation; appointment and duties; qualifications; other employees; volunteer services.

(a) The Board is hereby authorized to appoint a Superintendent of Recreation, which position is hereby authorized and created, who shall be the chief executive officer of the Board but not a member thereof, and shall be charged with the general organization, administration, and supervision of the program of public recreation contemplated and provided for by this chapter. The Superintendent shall be a person of such training, experience, and capacity as will especially qualify him to discharge the duties of the office. He shall possess those qualifications of education, training, and experience in recreation work as well as executive and administrative experience which will assure a thorough knowledge of current theory and practice in public recreation and

give promise of the administrative ability necessary to administer a program of public recreation in and for the Nation's Capital.

(b) The Board, upon the recommendation of the Superintendent, is empowered to appoint, promote, demote, and terminate the employment of such personnel as are necessary to carry out the purposes of this chapter. The Superintendent may suspend for cause for a period not exceeding 30 days any employee of the Board.

(c) All present personnel of the Community Center and Playgrounds Department whose services have heretofore been rated satisfactory shall be retained by the Board with the understanding that this provision does not contemplate the continued employment of individuals whose service is inefficient, and such personnel shall continue to function under existing rules and regulations until such time as classification and civil service requirements have been effected.

(d) The Superintendent and all other regular annual personnel of the Recreation Board shall be employees of the District of Columbia.

(e) Upon recommendation of the Superintendent, the Board is authorized to employ, on a part-time basis, without regard to the prohibition against double salaries provided by § 58 of Title 5, United States Code, such teachers, custodial, and other employees of the United States, the District of Columbia, and the Board of Education, upon approval by the present employer, as may be necessary to keep in operation and to conduct therein appropriate phases of the recreation program authorized by this chapter.

(f) The respective facilities of the United States, the District of Columbia, and the Board of Education shall, by the agreement of the respective agencies of the government having control of such facilities, be made available to the Board under the terms of this chapter.

(g) The Superintendent is authorized to employ for a 90-day period as full- or part-time employees, such referees, umpires, swimming-pool guards and attendants, gymnasium and playground supervisors, and other similar special employees as may be necessary to carry out the recreation program authorized by this chapter: Provided, that the retention in the District service of any such employees for a period longer than 90 days shall be subject to the approval of the Board.

(h) The Board is authorized to accept upon recommendation of the Superintendent the gratis services of such persons as may volunteer to aid in the conduct of any of its activities. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. II, § 2; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); Apr. 23, 1958, 72 Stat. 97, Pub. L. 85-383, § 1; 1973 Ed., § 8-209; Mar. 3, 1979, D.C. Law 2-139, § 3205(g), 25 DCR 5740.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-637.1 and 31-201.

Legislative history of Law 2-139. — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill

No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

References in text. — Section 58 of Title 5,

United States Code, referred to in subsection (e) of this section, was repealed by the Act of August 19, 1964, 78 Stat. 492, Pub. L. 88-448, § 402(a)(1). See now § 5533 of Title 5, United States Code.

Recreation Board abolished. — See note to § 8-201.

Cited in *Camp v. Recreation Bd.*, 104 F. Supp. 10 (D.D.C. 1952).

§ 8-213. Comprehensive program for public recreation; leasing rights not affected.

(a) The Board shall have power and authority to adopt, conduct, direct, or cause to be conducted or directed, under its supervision, a comprehensive program of public recreation which shall include the operation and direction of games, sports, arts and crafts, hobby shops, music, drama, speech, nursery play, dancing, lectures, forum for informal discussion, and such other physical, social, mental, and creative opportunities for leisure-time participation as the Board shall deem advisable to offer in major recreation centers, playfields, athletic fields, playgrounds, tennis courts, baseball diamonds, swimming pools, beaches, golf courses, community centers, and social centers in schools, parks, or other publicly owned buildings, as well as other recreational facilities which may be agreed upon between the Board and the agencies having jurisdiction over such facilities. The public properties utilized by the Board for the above purposes shall include those designated by the National Capital Planning Commission, in accordance with a comprehensive plan, as suitable and desirable units of the District of Columbia recreational system.

(b) Nothing in this chapter contained shall be construed as affecting any rights under any existing lease or leases lawfully entered into by any agency mentioned or affected by this chapter, nor shall anything in this chapter contained be construed as affecting the right of any such agency in the future lawfully to enter into leases of land or premises under its control for recreational purposes. (Apr. 29, 1942, 56 Stat. 263, ch. 265, art. II, § 3; 1973 Ed., § 8-210.)

Cross references. — As to lease of lands acquired for playground purposes, see § 8-103.

As to use of Washington Aqueduct for playground purposes, see § 8-126.

As to Glover Parkway and Children's Playground, see § 8-156.

Transfer of functions. — The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by

the Act of June 6, 1924, 43 Stat. 463, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

Recreation Board abolished. — See note to § 8-201.

Jurisdiction to determine policy questions. — The Board has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp v. Recreation Bd.*, 104 F. Supp. 10 (D.D.C. 1952).

§ 8-213.1. Disposition of fees.

Effective June 14, 1980, all fees and receipts from those activities for which the Department of Recreation and Parks determines to charge a fee shall be deposited in the General Fund. (Apr. 29, 1942, ch. 265, art. II, § 4a, as added —, 1995, D.C. Law 10- (Act 10-302), § 12, 41 DCR 5193.)

Effect of amendments. — D.C. Law 10- (Act 10-302) added this section.

Legislative history of Law 10- (Act 10-302). — Law 10- (Act 10-302), the "Technical

Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respec-

tively. Signed by the Mayor on July 25, 1995, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10- (Act 10-302) is projected to become law on May 25, 1995.

§ 8-214. Annual budget.

The Board shall prepare and submit to the Mayor of the District of Columbia an annual budget itemizing the appropriations necessary for the performance of its functions and duties under this chapter, including appropriations necessary for the purchase of books, literature, newspapers, periodicals, technical reference material, trophies, and medals, and as provided in § 8-224, the Board's share of the cost of improvement, maintenance, and upkeep of the buildings and grounds used by the Board and which are under the jurisdiction of the Board of Education, the Mayor, or the National Park Service. (Apr. 29, 1942, 56 Stat. 263, ch. 265, art. II, § 5; 1973 Ed., § 8-212.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Recreation Board abolished. — See note to § 8-201.

§ 8-215. Annual report.

The Board shall submit to the Mayor of the District of Columbia an annual report of its activities, together with recommendations for further activities and development, or curtailment. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. II, § 6; 1973 Ed., § 8-213.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Recreation Board abolished. — See note to § 8-201.

*Subchapter III. Relationship to Other Agencies.***§ 8-221. Transfer of functions of Community Center and Playgrounds Department; transfer of unexpended funds.**

All the functions of the Community Center and Playgrounds Department now under the joint control of the Mayor of the District of Columbia and the Board of Education are hereby transferred to and shall, after the effective date of this chapter, be vested in the said Recreation Board. The transfer of all such functions shall include transfer of the unexpended balance of the appropriation of the Community Center and Playgrounds Department, any unexpended balance in trust funds, and the salary of the coordinator now carried in the appropriation of the National Capital Parks. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 1; 1973 Ed., § 8-214.)

Cross references. — As to appropriation for acquisition of lands for playground purposes, see § 8-103.

References in text. — The words “effective date of this chapter”, appearing near the end of the first sentence of this section, mean 30 days from the date of its approval.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of the Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred

all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Recreation Board abolished. — See note to § 8-201.

§ 8-222. Control of lands, buildings, and other facilities.

The control of all land, buildings, and other facilities used by the Board shall be in accordance with agreements reached between the Board and the governmental agencies having jurisdiction over such properties. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 2; 1973 Ed., § 8-215.)

Recreation Board abolished. — See note to § 8-201.

§ 8-223. Powers of Board of Education, Mayor of District of Columbia, or National Park Service unabridged.

No power or authority conferred by this chapter shall be construed to abridge the powers of the Board of Education, the Mayor of the District of Columbia, or the National Park Service to refuse the use of any ground, building, or facility under their individual or collective control whenever the use of any such ground, building, or facility for recreational purposes would interfere with the

use or purpose for which such ground, building, or facility was acquired or created, and nothing herein expressed or implied shall be construed to abrogate any powers vested in the Board of Education by the Organic Act of 1906 insofar as the control of public education and all necessary facilities and personnel is concerned. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 3; 1973 Ed., § 8-216.)

Cross references. — As to use of public grounds for playgrounds, see § 8-124.

As to erection of temporary structures on reservations used as playgrounds, see § 8-125.

As to authority of Board of Education to grant use of public school buildings and grounds, see § 31-201.

Section references. — This section is referred to in § 31-201.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 8-224. Agreements for maintenance and improvement of playgrounds, etc.; transfer of funds, etc.

The maintenance and improvement of all playgrounds and recreation areas and facilities now under the control of the Board of Education, or of the Mayor of the District of Columbia, or of the National Park Service, or which may hereafter be acquired by any of said agencies for said purpose, may be provided for by agreement between the Board and the Board of Education, the Council of the District of Columbia, and the National Park Service, respectively. The Board is hereby authorized to transfer to the said agencies such funds, equipment, and personnel as may be necessary to carry said agreements into effect. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 4; 1973 Ed., § 8-217.)

Section references. — This section is referred to in §§ 8-214 and 31-201.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Recreation Board abolished. — See note to § 8-201.

§ 8-225. Services on reimbursable basis.

The Board is authorized to arrange with other governmental agencies for services on a reimbursable basis. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 5; 1973 Ed., § 8-218.)

Recreation Board abolished. — See note to § 8-201.

§ 8-226. Transfer of equipment, etc., of Community Center and Playgrounds Department.

All equipment, machinery, supplies, and materials of the Community Center and Playgrounds Department shall, on the effective date of this chapter, be transferred to the Board. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 6; 1973 Ed., § 8-219.)

References in text. — The words “effective date of this chapter”, appearing in this section, mean 30 days from the date of its approval. **Recreation Board abolished.** — See note to § 8-201.

CHAPTER 3. FUNDRAISING FOR RECREATIONAL FACILITIES.

Sec.

8-301. Definitions.

8-302. Authority of Department of Recreation and Parks.

8-303. Creation of Fund; accounting and investment.

Sec.

8-304. Park adoptions and sponsorships.

8-305. Mega recreation centers.

8-306. Establishment of Recreation Assistance Board.

§ 8-301. Definitions.

For purposes of this chapter:

(1) The term “adopt” means to enter into a binding commitment to a program, site, or operation for not less than 1 year in duration.

(2) The term “sponsor” means to pledge or promise support to a program, site, or operation on an intermittent, short-term or one-time basis. (Mar. 23, 1995, D.C. Law 10-246, § 2, 42 DCR 452.)

Temporary addition of chapter. — For temporary addition of chapter, see §§ 2-7 of the Recreation Emergency Act of 1995 (D.C. Act 11-20, February 28, 1995, 42 DCR 1175).

Legislative history of Law 10-246. — Law 10-246, the “Recreation Act of 1994,” was introduced in Council and assigned Bill No. 10-741, which was referred to the Committee on Public

Services and Youth Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on January 13, 1995, it was assigned Act No. 10-393 and transmitted to both Houses of Congress for its review. D.C. Law 10-246 became effective on March 23, 1995.

§ 8-302. Authority of Department of Recreation and Parks.

(a) The Department of Recreation and Parks (“Department” or “Departmental”) may accept donations, gifts by devise or bequest, grants, and any other type of asset from individuals, clubs, groups, corporations, partnerships, and other governmental entities, except that such acceptance must be approved by the Mayor before it occurs.

(b) The Department shall manage such property or funds in accordance with the provisions or conditions of the donation, gift, grant or other type of transfer, including but not limited to the investment of the principal of such property or funds. The Mayor shall consider the donor’s choice of which site, program or operation should be the recipient of the property. (Mar. 23, 1995, D.C. Law 10-246, § 3, 42 DCR 452.)

Temporary addition of chapter. — See note to § 8-301.

Legislative history of Law 10-246. — See note to § 8-301.

§ 8-303. Creation of Fund; accounting and investment.

(a) The Mayor shall establish for accounting and financial reporting purposes a Recreation Enterprise Fund (“Fund”) in accordance with generally accepted accounting principles.

(b) There is hereby authorized a direct appropriation to the Fund equal to the amount collected from fees, concessions, and services. Revenue deposited

into the Fund account shall be expended by the Department for the administration, improvement, and maintenance of property and programs managed by the Department and shall supplement, but not replace, services provided by the Department. The Fund shall not be used to provide funding to other District government agencies, except to pay the principal and interest on bonds in accordance with § 8-304.

(c) Once each year, the Department shall publish in the District of Columbia Register a specific accounting of how monies in the Fund have been spent and an accounting as to the amount remaining in the Fund. The accounting shall include the name of the donor or an anonymous contribution, the amount of the contribution, a description of the property donated and the name of the program or recreation center upon which the funds have been expended.

(d) Proceeds of the Fund may be invested in a prudent and reasonable manner consistent with applicable District government policies and procedures with recommendations from the Recreation Assistance Board established by § 8-306. (Mar. 23, 1995, D.C. Law 10-246, § 4, 42 DCR 452.)

Section references. — This section is referred to in § 8-306.

Legislative history of Law 10-246. — See note to § 8-301.

Temporary addition of chapter. — See note to § 8-301.

§ 8-304. Park adoptions and sponsorships.

(a) Individuals, associations, corporations, partnerships, neighborhood and civic groups or other governmental entities may adopt or sponsor Departmental programs, sites, or operations. The form of such adoption or sponsorship may be made by a donation of funds to the Fund, services, equipment, or any other asset with intrinsic value. The Department may form partnerships with any of the above stated groups to accomplish a stated goal or mission of the Department.

(b) The Department shall, within 1 year from the effective date of this act, promulgate regulations appropriate for the full implementation of this chapter including regulations related to park adoptions and sponsorships, vending and concessions fees, and permits. (Mar. 23, 1995, D.C. Law 10-246, § 5, 42 DCR 452.)

Section references. — This section is referred to in § 8-303.

Legislative history of Law 10-246. — See note to § 8-301.

Temporary addition of chapter. — See note to § 8-301.

§ 8-305. Mega recreation centers.

The Mayor shall develop, construct, and implement mega recreation centers in strategic locations throughout the District of Columbia. Such centers shall be spacious enough to accommodate several indoor activities simultaneously and contain state of the art equipment and apparatus. (Mar. 23, 1995, D.C. Law 10-246, § 6, 42 DCR 452.)

Temporary addition of chapter. — See note to § 8-301.

Legislative history of Law 10-246. — See note to § 8-301.

§ 8-306. Establishment of Recreation Assistance Board.

(a) There is hereby created a Recreation Assistance Board ("Board") that shall consist of 9 members that represent the following interests:

- (1) Two members from the corporate or business sector;
- (2) Two members who are District residents that have demonstrated a sincere interest in recreational activities with 1 member being an advocate for youth issues;
- (3) A representative of the District of Columbia Board of Education;
- (4) A representative from the arts or music community;
- (5) A representative of therapeutic or senior citizens;
- (6) The Executive Director of the District of Columbia Sports Commission; and

(7) The Director of the Department of Recreation and Parks or that person's designee who shall serve as the Secretary of the Board.

(b) Board members shall be appointed by the Mayor for 4 year terms of office with the advice and consent of the Council and shall serve without compensation.

(c) The Mayor shall appoint a member of the Board as its Chairperson. The Committee may elect other officers from its membership as it deems necessary.

(d) The Board shall provide resources and expertise on all matters relating to the mission of the Department with special emphasis on fundraising assistance, marketing of programs, and recommendations regarding the expenditure and growth of the Fund established in § 8-303.

(e) The Board may provide guidance on methods of developing and improving recreation programs, conduct public meetings, promote public awareness of recreational programs, and assist on other issues relating to the general purpose of the Department.

(f) The Board shall act as a liaison with the existing Recreation Council Community Management Committees, and other focus groups relative to issues associated with this chapter. (Mar. 23, 1995, D.C. Law 10-246, § 7, 42 DCR 452.)

Section references. — This section is referred to in § 8-303.

Temporary addition of chapter. — See note to § 8-301.

Legislative history of Law 10-246. — See note to § 8-301.

TITLE 9. PUBLIC BUILDINGS AND GROUNDS.

Chapter

1. Regulatory Provisions..... §§ 9-101 to 9-142.
2. Construction of Public Buildings..... §§ 9-201 to 9-220.
3. Repairs and Improvements..... §§ 9-301 to 9-303.
4. Sale of Public Lands..... §§ 9-401 to 9-407.
5. Exchange of District-Owned Land..... §§ 9-501 to 9-504.
6. Washington Convention Center..... §§ 9-601 to 9-610.
7. John A. Wilson Building Designation..... § 9-701.
8. Washington Convention Center Authority..... §§ 9-801 to 9-819.

Cross references. — As to smoke detector requirements, see § 5-529 et seq.

CHAPTER 1. REGULATORY PROVISIONS.

- | Sec. | Sec. |
|---|---|
| 9-101. Wharf property — Control. | 9-122. Same — Effective date. |
| 9-102. Same — Authority to make rules and regulations. | 9-123. Capitol Grounds — Employees to assist enforcement authorities. |
| 9-103. Steam — Furnishing to buildings in Judiciary Square. | 9-124. Same — Suspension of prohibitions against use — Authorization generally. |
| 9-104. Same — Furnishing to buildings enumerated in section. | 9-125. Same — Same — Authorization of Capitol Police Board. |
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| 9-106. Same — Boundaries; jurisdiction of Architect; responsibilities of Mayor. | 9-127. Same — Traffic regulations by Capitol Police Board. |
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| 9-110. Same — Sale of goods, advertising, or begging forbidden. | 9-130.1. Escape from juvenile facilities. |
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| 9-112. Same — Unlawful conduct. | 9-132. Penalty for violation of rules and regulations. |
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| 9-114. Same — Prosecution and punishment of offenses. | 9-134. Reciprocal agreements with states. |
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| 9-115.1. Protection of Congressional personnel by Capitol Police. | 9-136. Same — Construction. |
| 9-116. Detail of personnel from Metropolitan Police to Capitol Police Board. | 9-137. Same — Right, title and interest to remain in the United States; jurisdiction and responsibility of Mayor. |
| 9-117. Transfer of member of Metropolitan Police to Capitol Police — Election. | 9-138. Same — Restoration of grounds to original condition. |
| 9-118. Same — Creditable service as congressional employee. | |
| 9-119. Same — Payments into Retirement and Disability Fund. | |
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Sec.

9-139. Same — United States not to incur expense or liability.

9-140. Conveyance of real property for Innerloop Freeway System.

Sec.

9-141. Area authorized for construction of vehicular tunnel; conditions.

9-142. National Capital Service Area.

§ 9-101. Wharf property — Control.

With the exceptions hereinafter provided, the Mayor of the District of Columbia shall have the exclusive charge and control of all wharf property belonging to the United States or to the District of Columbia within said District, including all the wharves, piers, bulkheads, and structures thereon and waters adjacent thereto within the pier lines, and all slips, basins, docks, waterfronts, land under water, and structures thereon, and the appurtenances, easements, uses, reversions, and rights belonging thereto, which on March 3, 1899, were owned or possessed by the United States or the District of Columbia, or to which they or either of them was on that date or may thereafter become entitled, or which they or either of them may acquire under the provisions hereof or otherwise; and said Mayor of the District of Columbia shall have exclusive charge and control of the repairing, building, rebuilding, maintaining, altering, strengthening, leasing, and protecting said property and every part thereof, and all the cleaning, dredging, and deepening necessary in and about the same within the pier lines. The Council of the District of Columbia is authorized and empowered to make all needful rules and regulations for the government and control of all wharves, piers, bulkheads, and structures thereon, and waters adjacent thereto within the pier lines, and all the basins, slips, and docks, with the land under water, in said District not owned by the United States or the District of Columbia: Provided, that the following described property shall be placed under the immediate jurisdiction and control of the Chief of Engineers of the United States Army: The banks of the Potomac River from the north line of the Arsenal Grounds to the southern curb line of N Street South; also 500 linear feet of shoreline in the Flushing Reservoir at the foot of 17th Street, West, and west from the western curb of said street, including a levee 100 feet wide. (Mar. 3, 1899, 30 Stat. 1377, ch. 458, § 1; 1973 Ed., § 9-101.)

Cross references. — As to jurisdiction and control over fish wharf, see § 10-137.

As to harbor regulations, see §§ 22-1701 to 22-1703.

Section references. — This section is referred to in §§ 5-824 and 9-102.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(186) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Granting wharfing facilities and privileges. — The Mayor of the District of Columbia and the United States Engineers Office have

the legal authority to make decisions involving the granting of wharfing facilities and privileges. *Decatur Corp. v. Friedman*, 39 F. Supp. 692 (D.D.C. 1941), *aff'd*, 135 F.2d 812 (D.C. Cir. 1943).

Riparian boundaries. — Congress has granted power to the Council of District of Columbia to establish riparian boundaries. *Martin v. Standard Oil Co.*, 198 F.2d 523 (D.C. Cir. 1952).

Compact never in force in District. — The Compact of 1785 between Maryland and Virginia, relating to the mutual use of the waters of the Potomac and the rights of riparian owners, was never in force in the District of Columbia. *United States ex rel. Greathouse v. Hurley*, 63 F.2d 137 (D.C. Cir.), *aff'd sub nom. United States ex rel. Greathouse v. Dern*, 289 U.S. 352, 53 S. Ct. 614, 77 L. Ed. 1250 (1933).

§ 9-102. Same — Authority to make rules and regulations.

The Council of the District of Columbia and the Chief of Engineers of the United States Army are authorized and empowered to make all needful rules and regulations for the government and proper care of all the property placed in the charge of the Mayor of the District of Columbia and the Chief of Engineers and under their respective control by the provisions of § 9-101 and to annex such reasonable penalties to said rules and regulations as will secure their enforcement; and also the Council and the Chief of Engineers are authorized and empowered to make, and the Mayor and the Chief of Engineers to enforce, rules and regulations in regard to building and repairing wharves, the rental thereof, and the rate of wharfage. All rents so collected shall be covered into the Treasury of the United States, to be placed to the credit of the United States and to the credit of the General Fund of the District of Columbia. No lease made under the provisions of said § 9-101 shall extend beyond the period of 10 years. (Mar. 3, 1899, 30 Stat. 1378, ch. 458, § 2; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; 1973 Ed., § 9-102.)

Cross references. — As to Metropolitan Police charged with duty to enforce regulations for harbor, see § 4-107.

As to rental of fish wharf, see § 10-137.

As to harbor regulations, see §§ 22-1701 to 22-1703.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(187) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-103. Steam — Furnishing to buildings in Judiciary Square.

The Secretary of the Interior, through the National Park Service, is authorized to furnish steam from the Central Heating Plant to such buildings as may be erected by the District of Columbia on the property bounded by 4th and 5th Streets, and D and G Streets, Northwest, in the District of Columbia, and

known as Judiciary Square: Provided, that the District of Columbia agrees to pay for the steam furnished at reasonable rates, not less than cost, as may be determined by the Secretary of the Interior: And provided further, that the District of Columbia agrees to provide all necessary connections with the government mains at its own expense, and in a manner satisfactory to the Secretary of the Interior. (Apr. 27, 1937, 50 Stat. 95, ch. 136; 1973 Ed., § 9-103.)

Cited in *United States v. Redwood*, 110 WLR 1485 (Super. Ct. 1982).

§ 9-104. Same — Furnishing to buildings enumerated in section.

The Secretary of the Interior, through the National Park Service, is authorized to furnish steam from the Central Heating Plant to such buildings as may be erected by the District of Columbia on the property in the District of Columbia bounded by C Street, 3rd Street, Indiana Avenue, D Street, and John Marshall Place Northwest, and known as square 533; on the property bounded by C Street, John Marshall Place, Louisiana Avenue, and 6th Street Northwest, and known as square 490; on the property bounded by Pennsylvania Avenue, John Marshall Place, C Street, and 6th Street Northwest, and known as square 491; and on the property bounded by Pennsylvania Avenue, 3rd Street, C Street, and John Marshall Place Northwest, and known as reservation 10: Provided, that the District of Columbia agrees to pay for the steam furnished at reasonable rates, not less than cost, as may be determined by the Secretary of the Interior: And provided further, that the District of Columbia agrees to provide all necessary connections with the government mains at its own expense, and in a manner satisfactory to the Secretary of the Interior. (June 21, 1939, 53 Stat. 852, ch. 236; 1973 Ed., § 9-104.)

National Academy of Sciences. — Act of June 29, 1940, 54 Stat. 694, ch. 451, authorized	the furnishing of steam from the Central Heating Plant to the National Academy of Sciences.
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§ 9-105. Capitol Grounds — Authority to make regulations.

The Sergeants at Arms of the Senate and of the House of Representatives are authorized to make such regulations as they may deem necessary for preserving the peace and securing the Capitol from defacement, and for the protection of the public property therein, and they shall have power to arrest and detain any person violating such regulations, until such person can be brought before the proper authorities for trial. (R.S., § 1820; 1973 Ed., § 9-105.)

Cross references. — As to jurisdiction of Metropolitan Police including federal buildings, see § 4-116.

As to United States Park Police, see §§ 4-201 to 4-205.

Enlargement of Capitol Grounds. — Act of March 4, 1929, 45 Stat. 1694, ch. 708, as amended, provided for the enlargement of the Capitol Grounds.

§ 9-106. Same — Boundaries; jurisdiction of Architect; responsibilities of Mayor.

The United States Capitol Grounds shall comprise all squares, reservations, streets, roadways, walks, and other areas as defined on a map entitled "Map showing areas comprising United States Capitol Grounds", dated June 25, 1946, approved by the Architect of the Capitol and recorded in the Office of the Surveyor of the District of Columbia in Book 127, Page 8, including all additions added thereto by law subsequent to June 25, 1946, and the jurisdiction and control over the United States Capitol Grounds, vested prior to July 31, 1946 by law in the Architect of the Capitol, is extended to the entire area of the United States Capitol Grounds, and the Architect of the Capitol shall be responsible for the maintenance and improvement thereof, including those streets and roadways in said United States Capitol Grounds as shown on said map as being under the jurisdiction and control of the Mayor of the District of Columbia, except that the Mayor of the District of Columbia shall be responsible for the maintenance and improvement of those portions of the following streets which are situated between the curblines thereof: Constitution Avenue from Second Street Northeast to Third Street Northwest, First Street from D Street N.E. to D Street S.E., D Street from First Street S.E. to Canal Street S.W., and First Street from the north side of Louisiana Avenue to the intersection of C Street and Canal Street S.W., Pennsylvania Avenue Northwest from First Street Northwest to Third Street Northwest, Maryland Avenue Southwest from First Street Southwest to Third Street Southwest, Second Street Northeast from F Street Northeast to C Street Southeast; C Street Southeast from Second Street Southeast to First Street Southeast; that portion of Maryland Avenue Northeast from Second Street Northeast to First Street Northeast; that portion of New Jersey Avenue Northwest from D Street Northwest to Louisiana Avenue; that portion of Second Street Southwest from the north curb of D Street to the south curb of Virginia Avenue Southwest; that portion of Virginia Avenue Southwest from the east curb of Second Street Southwest to the west curb of Third Street Southwest; that portion of Third Street Southwest from the south curb of Virginia Avenue Southwest to the north curb of D Street Southwest; that portion of D Street Southwest from the west curb of Third Street Southwest to the east curb of Second Street Southwest; that portion of Canal Street Southwest, including sidewalks and traffic islands, from the south curb of Independence Avenue Southwest to the west curb of South Capitol Street: Provided, That the Mayor of the District of Columbia shall be permitted to enter any part of said United States Capitol Grounds for the purpose of repairing or maintaining or, subject to the approval of the Architect of the Capitol, for the purpose of constructing or altering, any utility service of the District of Columbia government. (July 31, 1946, 60 Stat. 718, ch. 707, § 1; Oct. 20, 1967, 81 Stat. 275, Pub. L. 90-108, § 1(a); 1973 Ed., § 9-118; Dec. 24, 1973, 87 Stat. 829, Pub. L. 93-198, title VII, § 739(g)(7); Oct. 10, 1980, 94 Stat. 1852, Pub. L. 96-432, § 2.)

Section references. — This section is referred to in §§ 1-244, 1-2002, 9-114, 9-115, 9-123, 9-125, 9-126, 9-128, and 9-142.

Severability of Public Law 93-198. — As to severability of Public Law 93-198, the District of Columbia Self-Government and Governmental Reorganization Act, see § 762 of the act, set forth in Volume 1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Extension of United States Capitol Grounds. — Section 739(g)(3) of the Act of December 24, 1973, 87 Stat. 828, Pub. L. 93-198, provided that § 1 of the Act of July 31, 1946, 60 Stat. 718, as amended, is amended to include within the definition of the United States Capitol Grounds the streets as set forth in the Act of December 24, 1973.

Section 1 of the Act of October 10, 1980, 94 Stat. 1852, Pub. L. 96-432, and the Act of December 22, 1982, 96 Stat. 1935, Pub. L. 97-379, provided that § 1 of the Act of July 31, 1946, 60 Stat. 718, as amended, is amended to include within the definition of the United States Capitol Grounds the areas as set forth in the Act of December 22, 1982.

Law Enforcement Authority of Capitol Police. — Title I of Act of October 6, 1992, 106 Stat. 1949, Pub. L. 102-397, provided that "An Act to define the area of the United States Capitol Grounds, to regulate the use thereof, and for other purposes" is amended to expand the jurisdiction of the Capitol Police.

Order of House Office Building Commission. — By order, dated October 17, 1967, the House Office Building Commission ordered that the Rayburn House Office Building, the subway connecting such building to the Capitol Building, the pedestrian tunnels connecting such building to the Longworth House Office Building, the underground garages in squares 637 and 691 and the tunnels connecting these garages to the House Office Buildings, are declared to be House Office Buildings and, as such, are made subject to the provisions of the Act of July 31, 1946, including any amendments to such Act, which are applicable to the Capitol Buildings.

Right to arrest. — Capitol Police have jurisdiction to act upon traffic tie-up on boundary street of the Capitol Grounds and, therefore, have the right to arrest if a misdemeanor is committed in their presence. *Anderson v. United States*, App. D.C., 132 A.2d 155, aff'd, 253 F.2d 335 (D.C. Cir. 1957), cert. denied, 357 U.S. 930, 78 S. Ct. 1375, 2 L. Ed. 2d 1372 (1958).

§ 9-107. Same — Protection.

It shall be the duty of the Capitol Police hereafter to prevent any portion of the Capitol Grounds and terraces from being used as playgrounds or otherwise, so far as may be necessary to protect the public property, turf and grass from destruction. (Apr. 29, 1876, 19 Stat. 41, ch. 86; 1973 Ed., § 9-118a.)

§ 9-108. Same — Public travel in and occupancy of restricted.

Public travel in and occupancy of said United States Capitol Grounds shall be restricted to the roads, walks, and places prepared for that purpose by flagging, paving, or otherwise. (July 31, 1946, 60 Stat. 718, ch. 707, § 2; 1973 Ed., § 9-119.)

Section references. — This section is referred to in §§ 9-114, 9-115, 9-123 to 9-126, 9-128, and 9-142.

§ 9-109. Same — Obstruction of roads.

It is forbidden to occupy the roads in said United States Capitol Grounds in such manner as to obstruct or hinder their proper use, or to use the roads in the area of said United States Capitol Grounds, south of Constitution Avenue and B Street and north of Independence Avenue and B Street, for the conveyance of goods or merchandise, except to or from the Capitol on government service. (July 31, 1946, 60 Stat. 718, ch. 707, § 3; 1973 Ed., § 9-120.)

Section references. — This section is referred to in §§ 9-114, 9-115, 9-123 to 9-126, 9-128, and 9-142.

§ 9-110. Same — Sale of goods, advertising, or begging forbidden.

It is forbidden to offer or expose any article for sale in said United States Capitol Grounds; to display any sign, placard, or other form of advertisement therein; to solicit fares, alms, subscriptions, or contributions therein. (July 31, 1946, 60 Stat. 718, ch. 707, § 4; 1973 Ed., § 9-121.)

Section references. — This section is referred to in §§ 9-114, 9-115, 9-123 to 9-126, 9-128, and 9-142.

§ 9-111. Same — Removal or injury of property forbidden.

It is forbidden to step or climb upon, remove, or in any way injure any statue, seat, wall, fountain, or other erection or architectural feature, or any tree, shrub, plant, or turf in said United States Capitol Grounds. (July 31, 1946, 60 Stat. 718, ch. 707, § 5; 1973 Ed., § 9-122.)

Section references. — This section is referred to in §§ 9-114, 9-115, 9-123 to 9-126, 9-128, and 9-142.

§ 9-112. Same — Unlawful conduct.

(a) It shall be unlawful for any person or group of persons:

(1) Except as authorized by regulations which shall be promulgated by the Capitol Police Board:

(A) To carry on or have readily accessible to the person of any individual upon the United States Capitol Grounds or within any of the Capitol Buildings any firearm, dangerous weapon, explosive, or incendiary device; or

(B) To discharge any firearm or explosive, to use any dangerous weapon, or to ignite any incendiary device, upon the United States Capitol Grounds or within any of the Capitol Buildings; or

(C) To transport by any means upon the United States Capitol Grounds or within any of the Capitol Buildings any explosive or incendiary device; or

(2) Knowingly, with force and violence, to enter or to remain upon the floor of either House of the Congress.

(b) It shall be unlawful for any person or group of persons willfully and knowingly:

(1) To enter or to remain upon the floor of either House of the Congress, to enter or to remain in any cloakroom or lobby adjacent to such floor, or to enter or to remain in the Rayburn Room of the House or the Marble Room of the Senate, unless such person is authorized, pursuant to rules adopted by that House or pursuant to authorization given by that House, to enter or to remain upon such floor or in such cloakroom, lobby, or room;

(2) To enter or to remain in the gallery of either House of the Congress in violation of rules governing admission to such gallery adopted by that House or pursuant to authorization given by that House;

(3) To enter or to remain in any room within any of the Capitol Buildings set aside or designated for the use of either House of the Congress or any member, committee, subcommittee, officer, or employee of the Congress or either House thereof with intent to disrupt the orderly conduct of official business;

(4) To utter loud, threatening, or abusive language, or to engage in any disorderly or disruptive conduct, at any place upon the United States Capitol Grounds or within any of the Capitol Buildings with intent to impede, disrupt, or disturb the orderly conduct of any session of the Congress or either House thereof, or the orderly conduct within any such building of any hearing before, or any deliberations of, any committee or subcommittee of the Congress or either House thereof;

(5) To obstruct, or to impede passage through or within, the United States Capitol Grounds or any of the Capitol Buildings;

(6) To engage in any act of physical violence upon the United States Capitol Grounds or within any of the Capitol Buildings; or

(7) To parade, demonstrate, or picket within any of the Capitol Buildings.

(c) Nothing contained in this section shall forbid any act of any member of the Congress, or any employee of a member of the Congress, any officer or employee of the Congress or any committee or subcommittee thereof, or any officer or employee of either House of the Congress or any committee or subcommittee thereof, which is performed in the lawful discharge of his official duties. (July 31, 1946, 60 Stat. 718, ch. 707, § 6; Aug. 6, 1962, 76 Stat. 307, Pub. L. 87-571; Oct. 20, 1967, 81 Stat. 276, Pub. L. 90-108, § 1(b); 1973 Ed., § 9-123.)

Section references. — This section is referred to in §§ 9-114, 9-115, 9-123 to 9-126, 9-128, and 9-142.

Purpose of subsection (b)(5) is to permit Congress to carry out the people's business unhindered by serious disruption. *Arshack v. United States*, App. D.C., 321 A.2d 845 (1974).

First Amendment not unduly burdened. — Where police roped off area for a group to assemble and the group was not arrested immediately upon blocking of a corridor but only after they were requested to move to an area cordoned off for them, their First Amendment right was not unduly burdened, and the appli-

cation of subsection (b)(5) was not violative of their rights. *Arshack v. United States*, App. D.C., 321 A.2d 845 (1974).

To convict defendant of violating subsection (b)(3) of this section, the jury would have to find that he remained in a room within the capitol with the intent to disrupt the orderly conduct of official business, but it would not have to find that he acted with the specific intent to violate the law with knowledge of the statute's existence. *Marcinski v. United States*, App. D.C., 479 A.2d 856 (1984), cert. denied, 469 U.S. 1224, 105 S. Ct. 1216, 84 L. Ed. 2d 357 (1985).

Subsection (b)(3) held neither vague nor overbroad as applied. — As applied to defendant, who unfurled a nine-foot banner containing a provocative message into Senate chamber to cause disruption after a prior arrest for the same act, subsection (b)(3) of this section was not potentially vague or overbroad in defining the conduct prohibited. *Marcinski v. United States*, App. D.C., 479 A.2d 856 (1984), cert. denied, 469 U.S. 1224, 105 S. Ct. 1216, 84 L. Ed. 2d 357 (1985).

Jury instruction sufficient to satisfy subsection (b)(4). — A judge's instruction that "an act is done willingly and knowingly if it is done voluntarily, purposefully and deliberately and with intent to violate the law, and not because of mistake or accident or inadvertently" was sufficient to satisfy the requirements of subsection (b)(4) of this section. *Smith v. United States*, App. D.C., 460 A.2d 576 (1983).

Alleged violator of subsection (b)(5) need not know of statute's existence. — In cases of alleged violations of subsection (b)(5) of this section, a defendant only has to intend to impede passage through the hallways of Congress; he need not know of the existence of the statute proscribing such activity. *Smith v. United States*, App. D.C., 460 A.2d 576 (1983).

Section (b)(7) is not unconstitutional. — Limitations under subsection (b)(7) are justified in view of the numerous alternatives for exercising one's First Amendment rights in petitioning Congress and is, therefore, not unconstitutional. *United States v. Ruther*, 116 WLR 917 (Super. Ct. 1988).

Absence of requirement of disruption of, or an interference with, Congressional activities, in subsection (b)(7), as is required under subsections (b)(4) and (5), must be interpreted as an intentional omission by Congress. *United States v. Ruther*, 116 WLR 917 (Super. Ct. 1988).

Instruction excusing defendants properly refused. — Court properly refused instruction which would have excused defendants on the grounds that they had acted in accordance with the dictates of their conscience and that they were justified by obligations imposed by international law. *Arshack v. United States*, App. D.C., 321 A.2d 845 (1974).

Congressional committee hearing rooms not a public forum. — The normal purpose and function of the congressional committee hearing rooms, the orderly and formal presentation of testimony in the form of debate and discussion by elected officials and authorized witnesses, necessitates a finding that this arena is a nonpublic forum. *United States v. Dobkin*, 119 WLR 2218 (Super. Ct. 1991).

Subsection (b)(4) constitutes a reasonable restriction. — Subsection (b)(4) succinctly delineates the precise type of conduct

(disorderly or disruptive) that is prohibited, hence, because subsection (b)(4) provides adequate and fair warning of the type of conduct that is prohibited, it is not void for vagueness. *United States v. Dobkin*, 119 WLR 2218 (Super. Ct. 1991).

Subsection (b)(4) is a reasonable, nondiscriminatory regulation that promotes Congress' legitimate interest in preserving and maintaining order in its committee hearing rooms. *United States v. Dobkin*, 119 WLR 2218 (Super. Ct. 1991).

The restriction on disruptive activities imposed by subsection (b)(4) is reasonable because no discrimination is imposed on the basis of the speaker's viewpoint. *United States v. Dobkin*, 119 WLR 2218 (Super. Ct. 1991).

The legitimate interest Congress sought to further by enacting subsection (b)(4) was to provide and ensure for the uninterrupted and orderly process of engaging in debates and discussions during decision-making sessions. *United States v. Dobkin*, 119 WLR 2218 (Super. Ct. 1991).

Subsection (b)(5) constitutes a reasonable restriction. — Subsection (b)(5) is a reasonable time, place and manner restriction. *Farina v. United States*, App. D.C., 622 A.2d 50 (1993).

Subsection (b)(7) is unconstitutional. — Because a substantial amount of protected activity is unavoidably prohibited by subsection (b)(7), it must be declared unconstitutional. *United States v. Dobkin*, 119 WLR 2218 (Super. Ct. 1991).

Enforcement of subsection (b)(7) was not meant to be limited to instances wherein individuals engaged in what amounted to disruptive conduct; rather, Congress intended to prohibit a limitless amount of conduct without discriminating between that conduct which was disruptive and that conduct which was peaceful. *United States v. Dobkin*, 119 WLR 2218 (Super. Ct. 1991).

Content-neutral restrictions permissible. — The United States Capitol Rotunda, which is at the very heart of the United States Capitol Building, is a unique situs for demonstration activity and a place traditionally open to the public to which access cannot be denied broadly or absolutely; nonetheless, content-neutral restrictions on the time, place, and manner of expression are permissible if they are narrowly tailored to serve a significant governmental interest, and if they leave open ample alternative channels of communication. *Berg v. United States*, App. D.C., 631 A.2d 394 (1993).

Application of tourist standard. — Because tourists were not allowed in a restricted corridor closed to the public and to which access could be gained only by showing a building access card, the application of the tourist stan-

dard was inappropriate. *Markowitz v. United States*, App. D.C., 598 A.2d 398 (1991), cert. denied, — U.S. —, 113 S. Ct. 818, 121 L. Ed. 2d 689 (1992).

Demonstration activities in Capitol Rotunda. — In cases involving demonstrations in the Capitol Rotunda, the court has imposed the “tourist standard” to save content-neutral statutes regulating the time, place, and manner of expression from unconstitutionality in their application; the “tourist standard” restricts the scope of statutes by penalizing only conduct that is more disruptive or more substantial (in degree or number) than that normally engaged in and routinely permitted by tourists and others. *Berg v. United States*, App. D.C., 631 A.2d 394 (1993).

The appellants’ demonstration activities in the Capitol Rotunda, in which an estimated three-fourths of the demonstrators sat or lay down on the Rotunda floor, displayed a large banner, and refused to stand up when informed that they were violating a building regulation and ordered to cease and desist, were clearly more disruptive and more substantial than the activities of ordinary tourists; thus, subsection (b)(7) and subsection (b)(5) were constitutionally applied to the appellants’ conduct. *Berg v. United States*, App. D.C., 631 A.2d 394 (1993).

Closure order aimed at demonstrators could not serve as independent factor justifying arrest. — Where closure order regarding the Rotunda of the U.S. Capitol was tailor-made for demonstrators and served as the basis for their arrests, closing the area for security

reasons arising from the presence of the demonstrators could not serve to bootstrap such security concern into an independent factor justifying their arrest. *Wheelock v. United States*, App. D.C., 552 A.2d 503 (1988).

Evidence. — Evidence was sufficient to sustain conviction for disorderly conduct. *Reale v. United States*, App. D.C., 573 A.2d 13 (1990).

Subsections (b)(4) and (b)(7) are not the same offenses within the meaning of the double jeopardy clause because each provision requires proof of a number of facts which the other does not. *Bardoff v. United States*, App. D.C., 628 A.2d 86 (1993).

Subsection (b)(7) not lesser included offense of subsection (b)(4). — Subdivision (b)(7) of this section, prohibiting willful and knowing picketing within the Capitol Grounds, is not a lesser included offense of the offense of disorderly conduct. *Bardoff v. United States*, App. D.C., 628 A.2d 86 (1993).

Jury instruction properly refused. — Trial judge did not err in refusing to give a jury instruction, which included as an element of subsection (b)(5) the requirement that the jury find the appellants’ conduct caused serious disruption of Congress’ ability to conduct its business. *Farina v. United States*, App. D.C., 622 A.2d 50 (1993).

Cited in *Abney v. United States*, App. D.C., 451 A.2d 78 (1982); *Cordero v. United States*, App. D.C., 456 A.2d 837 (1983); *United States v. Murphy*, 114 WLR 2150 (Super. Ct. 1986); *Fedorov v. United States*, App. D.C., 600 A.2d 370 (1991).

§ 9-113. Same — Parades, assemblages, and displays forbidden.

It is forbidden to parade, stand, or move in processions or assemblages in said United States Capitol Grounds, or to display therein any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement, except as hereinafter provided in §§ 9-124 and 9-125. (July 31, 1946, 60 Stat. 719, ch. 707, § 7; 1973 Ed., § 9-124.)

Section references. — This section is referred to in §§ 9-114, 9-115, 9-123 to 9-126, 9-128, and 9-142.

Section void on its face. — Governmental interest in maintaining a “park-like setting” on Capitol Grounds is insufficient to sustain this section and is void on its face on both First and Fifth Amendment grounds. *Jeannette Rankin Brigade v. Chief of Capitol Police*, 342 F. Supp. 575 (D.D.C.), aff’d, 409 U.S. 972, 93 S. Ct. 311, 34 L. Ed. 2d 236 (1972).

And unconstitutionally vague. — This section which forbids parades, processions, or assemblages on the United States Capitol Grounds except with the permission of the

President of the Senate and the Speaker of the House of Representatives is unconstitutionally vague as written and administered. *Dellums v. Powell*, 566 F.2d 167 (D.C. Cir. 1977), cert. denied, 438 U.S. 916, 98 S. Ct. 3146, 57 L. Ed. 2d 1161 (1978).

Section not beyond injunction. — This section, appearing both in the United States Code and the District of Columbia Code, is not a purely “local ordinance” and it is not beyond the power of a 3-judge court to enjoin its enforcement. *Jeannette Rankin Brigade v. Chief of Capitol Police*, 342 F. Supp. 575 (D.D.C.), aff’d, 409 U.S. 972, 93 S. Ct. 311, 34 L. Ed. 2d 236 (1972).

Matter of rewriting this section is a function to be performed by Congress. *Jeannette Rankin Brigade v. Chief of Capitol Police*, 342 F. Supp. 575 (D.D.C.), *aff'd*, 409 U.S. 972, 93 S. Ct. 311, 34 L. Ed. 2d 236 (1972).

Declaratory relief appropriate. — Action by ad hoc committee against Chief of Capitol Police for declaration that this section was unconstitutional presented a genuine controversy rendering appropriate declaratory relief. *Jeannette Rankin Brigade v. Chief of Capitol Police*, 342 F. Supp. 575 (D.D.C.), *aff'd*, 409 U.S. 972, 93 S. Ct. 311, 34 L. Ed. 2d 236 (1972).

Action to have section declared unconstitutional not moot. — Where this section would continue to be a bar to the assertion of protestors' rights of free assembly and where the petition and rights asserted were of continuing character, a committee for declaration that the section was unconstitutional was not moot because it had dispersed. *Jeannette Ran-*

kin Brigade v. Chief of Capitol Police, 421 F.2d 1090 (D.C. Cir. 1969).

Order to quit Capitol Grounds must precede arrest made under this section prohibiting assemblages on the grounds without permission of the President of the Senate and the Speaker of the House of Representatives. *Dellums v. Powell*, 566 F.2d 167 (D.C. Cir. 1977), *cert. denied*, 438 U.S. 916, 98 S. Ct. 3146, 57 L. Ed. 2d 1161 (1978).

Conduct not prohibited. — The conduct of defendants charged with unlawful entry in refusing to quit the steps of the United States Capitol after being ordered to do so by the Capitol Police and in reading names of Vietnam war dead in an ordinary speaking voice did not come within prohibition of this section. *United States v. Nicholson*, App. D.C., 263 A.2d 56 (1970).

Cited in *Cordero v. United States*, App. D.C., 456 A.2d 837 (1983).

§ 9-114. Same — Prosecution and punishment of offenses.

(a) Any violation of § 9-112(a), and any attempt to commit any such violation, shall be a felony punishable by a fine not exceeding \$5,000, or imprisonment not exceeding 5 years, or both.

(b) Any violation of § 9-108, 9-109, 9-110, 9-111, 9-112(b), or 9-113, and any attempt to commit any such violation, shall be a misdemeanor punishable by a fine not exceeding \$500, or imprisonment not exceeding 6 months, or both.

(c) Violations of §§ 9-106, 9-108 to 9-115, 9-123 to 9-128, including attempts or conspiracies to commit such violations, shall be prosecuted by the United States Attorney or his assistants in the name of the United States. None of the general laws of the United States and none of the laws of the District of Columbia shall be superseded by any provision of §§ 9-106, 9-108 to 9-115, 9-123 to 9-128. Where the conduct violating §§ 9-106, 9-108 to 9-115, 9-123 to 9-128, also violates the general laws of the United States or the laws of the District of Columbia, both violations may be joined in a single prosecution. Prosecution for any violation of § 9-112(a) or for conduct which constitutes a felony under the general laws of the United States or the laws of the District of Columbia shall be in the United States District Court for the District of Columbia. All other prosecutions for violations of §§ 9-106, 9-108 to 9-115, 9-123 to 9-128 may be in the Superior Court of the District of Columbia. Whenever any person is convicted of a violation of §§ 9-106, 9-108 to 9-115, 9-123 to 9-128 and of the general laws of the United States or the laws of the District of Columbia, in a prosecution under this subsection, the penalty which may be imposed for such violation is the highest penalty authorized by any of the laws for violation of which the defendant is convicted. (July 31, 1946, 60 Stat. 719, ch. 707, § 8; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Oct. 20, 1967, 81 Stat. 277, Pub. L. 90-108, § 1(c); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 9-125.)

Section references. — This section is referred to in §§ 9-115, 9-123, 9-125, 9-126, 9-128, and 9-142.

Cited in United States v. Ruther, 116 WLR 917 (Super. Ct. 1988).

§ 9-115. Same — Policing.

The Capitol Police shall police the United States Capitol Buildings and Grounds under the direction of the Capitol Police Board, consisting of the Sergeant at Arms of the United States Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol, and shall have the power to enforce the provisions of §§ 9-106, 9-108 to 9-115, 9-123 to 9-128, and regulations promulgated under § 9-127 and to make arrests within the United States Capitol Buildings and Grounds for any violations of any law of the United States, of the District of Columbia, or of any State, or any regulation promulgated pursuant thereto: Provided, That for the fiscal year for which appropriations are made by this Act, the Capitol Police shall have the additional authority to make arrests within the District of Columbia for crimes of violence, as defined in 18 U.S.C. § 16, committed within the Capitol Buildings and Grounds and shall have the additional authority to make arrests, without a warrant, for crimes of violence, as defined in 18 U.S.C. § 16, committed in the presence of any member of the Capitol Police performing official duties: Provided further, That the Metropolitan Police force of the District of Columbia are authorized to make arrests within the United States Capitol Buildings and Grounds for any violation of any such laws or regulations, but such authority shall not be construed as authorizing the Metropolitan Police force, except with the consent or upon the request of the Capitol Police Board, to enter such buildings to make arrests in response to complaints or to serve warrants or to patrol the United States Capitol Buildings and Grounds. For the purpose of this section, the word “grounds” shall include the House Office Buildings parking areas and that part or parts of property which have been or hereafter are acquired in the District of Columbia by the Architect of the Capitol, or by an officer of the Senate or the House, by lease, purchase, intergovernment transfer, or otherwise, for the use of the Senate, the House, or the Architect of the Capitol. (July 31, 1946, 60 Stat. 719, ch. 707, § 9; 1973 Ed., § 9-126; Dec. 24, 1973, 87 Stat. 829, Pub. L. 93-198, title VII, § 739(g)(4), (5); Nov. 5, 1990, 104 Stat. 2264, Pub. L. 101-520, § 106(a).)

Cross references. — As to definition of “Capitol Buildings” see § 9-128.

Section references. — This section is referred to in §§ 9-114, 9-123, 9-125, 9-126, 9-128, and 9-142.

References in text. — “This Act,” referred to in the first proviso, is Pub. L. 101-520, 104 Stat. 2264, November 5, 1990.

Severability of Public Law 93-198. — As to severability of Public Law 93-198, the District of Columbia Self-Government and Governmental Reorganization Act, see § 762 of the act, set forth in Volume 1.

Concurrent jurisdiction over Office of Technology Assessment. — Act of November 14, 1977, 91 Stat. 1362, Pub. L. 95-175, provided that the supervision of the United States Capitol Police shall extend over that part or parts of the premises leased by the Office of Technology Assessment. In carrying out such supervision, the United States Capitol Police shall have concurrent jurisdiction with that of the Metropolitan Police of the District of Columbia.

No agency relationship between Capitol Police and Metropolitan Police. — This section does not create an agency relationship

between the Capitol Police and the Metropolitan Police. *Stein v. United States*, App. D.C., 532 A.2d 641 (1987), cert. denied, 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705 (1988).

This section gives to the Capitol Police the power to make arrests, but nowhere does it make them agents of the Metropolitan Police (or anyone else) for that purpose. It is an independent grant of arrest power to the Capitol Police, unrelated to any other powers which the Metropolitan Police may have under other statutes or regulations. *Stein v. United States*, App. D.C., 532 A.2d 641 (1987), cert. denied, 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705 (1988).

Right to arrest. — Capitol Police have jurisdiction to act upon traffic tie-up on boundary street of the Capitol Grounds and, therefore, have the right to arrest if a misdemeanor is committed in their presence. *Anderson v. United States*, App. D.C., 132 A.2d 155, aff'd, 253 F.2d 335 (D.C. Cir. 1957), cert. denied, 357 U.S. 930, 78 S. Ct. 1375, 2 L. Ed. 2d 1372 (1958).

This section, § 9-115.1(c) and *Andersen v. United States*, App. D.C., 132 A.2d 155, aff'd, 253 F.2d 335 (D.C. Cir. 1957), cert. denied, 357 U.S. 930, 78 S. Ct. 1375, 2 L. Ed. 2d 1372 (1958) set the parameters for when members of the Capitol Police can legally make arrests in their capacity as members of the force. Otherwise, when making arrests, members of the Capitol Police stand in the same shoes as ordinary civilians and civilian arrests are regulated by § 23-582(b). *United States v. O'Brien*, 116 WLR 2117 (Super. Ct. 1988).

United States Capitol Police were not authorized under this section or § 9-115.1(c) nor under *Andersen v. United States*, App. D.C., 132 A.2d 155, aff'd, 253 F.2d 335 (D.C. Cir.

1957), cert. denied, 357 U.S. 930, 78 S. Ct. 1375, 2 L. Ed. 2d 1372 (1958), nor were they authorized as civilians under § 23-582(b), to stop and arrest a defendant for driving while intoxicated under § 40-716 and traffic violations allegedly committed on the grounds of the U.S. Capitol where the defendant was observed and stopped 1 block from the grounds of the U.S. Capitol. *United States v. O'Brien*, 116 WLR 2117 (Super. Ct. 1988).

Arrest not per se reasonable. — Where the law relevant to the reasonableness of an arrest was not highly technical, where the controlling case was one with which the Chief of Police was fully acquainted, and where the central probable cause issue was one of fact, advice of counsel could not make his arrest of demonstrators per se reasonable. *Dellums v. Powell*, 566 F.2d 167 (D.C. Cir. 1977), cert. denied, 438 U.S. 916, 98 S. Ct. 3146, 57 L. Ed. 2d 1161 (1978).

Right to stop vehicle. — Capitol Police officer was authorized to stop a vehicle outside the Capitol grounds because he had reason to believe that the vehicle had been stolen; the officer was entitled, therefore, under the common law doctrine of fresh pursuit to complete a stop begun on the property outside the Capitol grounds. In *re C.A.P.*, App. D.C., 633 A.2d 787 (1993).

Chief not liable for malicious prosecution. — Since the involvement of the Chief of the Metropolitan Police in the arrest of demonstrators was limited to the decision to arrest and did not include meeting with United States attorneys to file informations against the arrestees, the Chief could not be held liable for malicious prosecution. *Dellums v. Powell*, 566 F.2d 216 (D.C. Cir. 1977), cert. denied, 438 U.S. 916, 98 S. Ct. 3147, 57 L. Ed. 2d 1161 (1978).

§ 9-115.1. Protection of Congressional personnel by Capitol Police.

(a) Subject to the direction of the Capitol Police Board, the United States Capitol Police is authorized to protect, in any area of the United States, the person of any member of Congress, officer of the Congress, as defined in 2 U.S.C. § 60-1(b), and any member of the immediate family of any such member or officer, if the Capitol Police Board determines such protection to be necessary.

(b) In carrying out its authority under this section, the Capitol Police Board, or its designee, is authorized, in accordance with regulations issued by the Board pursuant to this section, to detail, on a case-by-case basis, members of the United States Capitol Police to provide such protection as the Board may determine necessary under this section.

(c) In the performance of their protective duties under this section, members of the United States Capitol Police are authorized:

(1) To make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

(2) To utilize equipment and property of the Capitol Police.

(d) Whoever knowingly and willfully obstructs, resists, or interferes with a member of the Capitol Police engaged in the performance of the protective functions authorized by this section shall be fined not more than \$300 or imprisoned not more than 1 year, or both.

(e) Nothing contained in this section shall be construed to imply that the authority, duty, and function conferred on the Capitol Police Board and the United States Capitol Police are in lieu of or intended to supersede any authority, duty, or function imposed on any federal department, agency, bureau, or other entity, or the Metropolitan Police of the District of Columbia, involving the protection of any such member, officer, or family member.

(f) As used in this section, the term "United States" means each of the several states of the United States, the District of Columbia, and territories and possessions of the United States. (July 31, 1946, ch. 707, § 9A, as added Dec. 29, 1981, 95 Stat. 1723, Pub. L. 97-143, § 1(a).)

Right to arrest. — Subsection (c) of this section, § 9-115 and *Andersen v. United States*, App. D.C., 132 A.2d 155, aff'd, 253 F.2d 335 (D.C. Cir. 1957), cert. denied, 357 U.S. 930, 78 S. Ct. 1375, 2 L. Ed. 2d 1372 (1958) set the parameters for when members of the Capitol Police can legally make arrests in their capacity as members of the force. Otherwise, when making arrests, members of the Capitol Police stand in the same shoes as ordinary civilians and civilian arrests are regulated by § 23-582(b). *United States v. O'Brien*, 116 WLR 2117 (Super. Ct. 1988).

United States Capitol Police were not autho-

rized under subsection (c) of this section or § 9-115 nor under *Andersen v. United States*, App. D.C., 132 A.2d 155, aff'd, 253 F.2d 335 (D.C. Cir. 1957), cert. denied, 357 U.S. 930, 78 S. Ct. 1375, 2 L. Ed. 2d 1372 (1958), nor were they authorized as civilians under § 23-582(b), to stop and arrest a defendant for driving while intoxicated under § 40-716 and traffic violations allegedly committed on the grounds of the U.S. Capitol where the defendant was observed and stopped 1 block from the grounds of the U.S. Capitol. *United States v. O'Brien*, 116 WLR 2117 (Super. Ct. 1988).

§ 9-116. Detail of personnel from Metropolitan Police to Capitol Police Board.

The Mayor of the District of Columbia is authorized and directed to make such details upon the request of the Board. Personnel so detailed shall, during the period of such detail, serve under the direction and instructions of the Board and are authorized to exercise the same authority as members of such Metropolitan Police and members of the Capitol Police and to perform such other duties as may be assigned by the Board. Reimbursement for salaries and other expenses of such detail personnel shall be made to the government of the District of Columbia, and any sums so reimbursed shall be credited to the appropriation or appropriations from which such salaries and expenses are payable and shall be available for all the purposes thereof: Provided, that any person detailed under the authority of this section or under similar authority in the Legislative Branch Appropriation Act, 1942, and the Second Deficiency Appropriation Act, 1940, from the Metropolitan Police of the District of

Columbia shall be deemed a member of such Metropolitan Police during the period or periods of any such detail for all purposes of rank, pay, allowances, privileges, and benefits to the same extent as though such detail had not been made, and at the termination thereof any such person shall have a status with respect to rank, pay, allowances, privileges, and benefits which is not less than the status of such person in such police at the end of such detail. (July 10, 1972, 86 Stat. 440, Pub. L. 92-342, § 101; 1973 Ed., § 9-126a; Aug. 5, 1977, 91 Stat. 670, Pub. L. 95-94, title I.)

References in text. — The Second Deficiency Appropriation Act, 1940 and the Legislative Branch Appropriation Act, 1942, both referred to in the proviso of the last sentence of this section, were enacted by 54 Stat. 629 and 55 Stat. 456, respectively.

District liable for unlawful arrests. — Evidence that the Metropolitan Police Department is under the general duty to enforce the laws of the United States within the District, that the Capitol Police force is staffed by members of the Metropolitan Police Department

and patrols the Capitol Grounds, that the Chief of the Metropolitan Police furnished members of the force to keep order during demonstrations, and that the Capitol Police force was under the direction of United States officials, demonstrates that the District of Columbia could be held liable for unlawful arrests of demonstrators. *Dellums v. Powell*, 566 F.2d 216 (D.C. Cir. 1977), cert. denied, 438 U.S. 916, 98 S. Ct. 3147, 57 L. Ed. 2d 1161 (1978).

Cited in *Stein v. United States*, App. D.C., 532 A.2d 641 (1987).

§ 9-117. Transfer of member of Metropolitan Police to Capitol Police — Election.

(a) Any member of the Metropolitan Police force detailed to the Capitol Police (other than the Capitol Police Chief):

(1) Who on August 31, 1980, has completed 20 years or more of police service shall be reassigned to the Metropolitan Police force effective October 1, 1980, unless during the 30-day period beginning on September 1, 1980, such member makes an election under subsection (b) of this section; or

(2) Who after August 31, 1980, completes 20 years of police service shall be reassigned to the Metropolitan Police force effective at the end of the 30-day period beginning on the date of such completion, unless, during such period, such member makes an election under subsection (b) of this section.

(b)(1) A member of the Metropolitan Police force described in subsection (a) of this section may elect to transfer to the Capitol Police with the rank, pay, and seniority that are most nearly equivalent to the rank, pay, and seniority of such member on the day before the date of such transfer, as determined by the Capitol Police Board.

(2) A transfer to the Capitol Police under this subsection shall be effective on the date on which the electing member would have been reassigned to the Metropolitan Police force but for the election by such member under paragraph (1) of this subsection.

(3) An election under paragraph (1) of this subsection shall be made in writing to the Chairman of the Capitol Police Board in such form and manner as may be prescribed by the Board.

(c) In each case in which a member of the Metropolitan Police force transfers to the Capitol Police under subsection (b) of this section, the position occupied by such member immediately before the effective date of such transfer shall, beginning on such date, be a position on the rolls of the Capitol Police for the

purpose of providing for the assimilation of such member. (Dec. 20, 1979, 93 Stat. 1099, Pub. L. 96-152, § 2.)

Section references. — This section is referred to in §§ 9-118 and 9-120 to 9-122.

§ 9-118. Same — Creditable service as congressional employee.

(a) Any police service: (1) Of the Capitol Police Chief shall be treated, effective on the effective date of §§ 9-117 to 9-122; and (2) of a member of the Metropolitan Police force transferred to the Capitol Police under § 9-117(b) shall be treated, effective on the effective date of such transfer; as creditable service as a Congressional employee for purposes of determining eligibility for, and the amount of, an annuity under subchapter III of Chapter 83 of Title 5, United States Code.

(b) Effective on the date on which police service is first treated as creditable service as a Congressional employee under subsection (a) of this section, the individual or member involved shall forfeit all annuity rights under the Policemen and Firemen's Retirement and Disability Act (D.C. Code, § 4-607 et seq.). (Dec. 20, 1979, 93 Stat. 1099, Pub. L. 96-152, § 3.)

Section references. — This section is referred to in §§ 9-119 and 9-120 to 9-122. D.C., 598 A.2d 398 (1991), cert. denied, — U.S. —, 113 S. Ct. 818, 121 L. Ed. 2d 689 (1992).

Cited in Markowitz v. United States, App.

§ 9-119. Same — Payments into Retirement and Disability Fund.

(a) An amount equal to the total amount of: (1) Deductions and withholdings from pay for retirement under the Policemen and Firemen's Retirement and Disability Act (D.C. Code, § 4-607 et seq.) for police service treated as creditable service as a congressional employee under § 9-118; and (2) sums paid by the Congress to the District of Columbia as a retirement contribution for any such police service performed while detailed to the Capitol Police; shall be paid by the Mayor of the District of Columbia into the Treasury of the credit of the Civil Service Retirement and Disability Fund. For purposes of § 8334(c) of Title 5, United States Code, such payment shall constitute the required deposit for police service treated as creditable service as a congressional employee under § 9-118.

(b) Payments into the Treasury required by subsection (a) of this section shall be made not later than the date on which police service is first treated as creditable service as a congressional employee under § 9-118 with respect to the individual or member involved. (Dec. 20, 1979, 93 Stat. 1099, Pub. L. 96-152, § 4.)

Section references. — This section is referred to in §§ 9-118 and 9-120 to 9-122.

§ 9-120. Same — Definitions.

As used in §§ 9-117 to 9-122:

(1) The term “Metropolitan Police force” means the Metropolitan Police force of the District of Columbia.

(2) The term “police service” means creditable service under § 4-610. (Dec. 20, 1979, 93 Stat. 1099, Pub. L. 96-152, § 5.)

Section references. — This section is referred to in §§ 9-118, 9-121, and 9-122.

§ 9-121. Same — Appropriations.

Until otherwise provided by law, the contingent fund of the House of Representatives shall be available to carry out §§ 9-117 to 9-122. (Dec. 20, 1979, 93 Stat. 1099, Pub. L. 96-152, § 6.)

Section references. — This section is referred to in §§ 9-118, 9-120, and 9-122.

§ 9-122. Same — Effective date.

Sections 9-117 to 9-122 shall take effect on the 1st day of the 2nd month after the month in which §§ 9-117 to 9-122 are enacted. (Dec. 20, 1979, 93 Stat. 1099, Pub. L. 96-152, § 7.)

Section references. — This section is referred to in §§ 9-118, 9-120, and 9-121.

§ 9-123. Capitol Grounds — Employees to assist enforcement authorities.

It shall be the duty of all persons employed in the service of the government in the Capitol or in the United States Capitol Grounds to prevent, as far as may be in their power, offenses against §§ 9-106, 9-108 to 9-115, 9-123 to 9-128, and to aid the police, by information or otherwise, in securing the arrest and conviction of offenders. (July 31, 1946, 60 Stat. 719, ch. 707, § 10; 1973 Ed., § 9-127.)

Section references. — This section is referred to in §§ 9-114, 9-115, 9-125, 9-126, 9-128, and 9-142.

Cited in *United States v. Dobkin*, 119 WLR 2218 (Super. Ct. 1991).

§ 9-124. Same — Suspension of prohibitions against use — Authorization generally.

In order to admit of the due observance within the United States Capitol Grounds of occasions of national interest becoming the cognizance and entertainment of Congress, the President of the Senate and the Speaker of the House of Representatives, acting concurrently, are hereby authorized to suspend for such proper occasions so much of the prohibitions contained in

§§ 9-108 to 9-113 as would prevent the use of the roads and walks of the said grounds by processions or assemblages, and the use upon them of suitable decorations, music, addresses, and ceremonies: Provided, that responsible officers shall have been appointed, and arrangements determined which are adequate, in the judgment of said President of the Senate and Speaker of the House of Representatives, for the maintenance of suitable order and decorum in the proceedings, and for guarding the Capitol and its grounds from injury. (July 31, 1946, 60 Stat. 719, ch. 707, § 11; 1973 Ed., § 9-128.)

Section references. — This section is referred to in §§ 9-113, 9-114, 9-115, 9-123, 9-125, 9-126, 9-128, and 9-142.

2150 (Super. Ct. 1986); *United States v. Ruth*, 116 WLR 917 (Super. Ct. 1988); *United States v. Kennedy*, 118 WLR 873 (Super. Ct. 1990).

Cited in *United States v. Murphy*, 114 WLR

§ 9-125. Same — Same — Authorization of Capitol Police Board.

In the absence from Washington of either of the officers designated in § 9-124, the authority therein given to suspend certain prohibitions of §§ 9-106, 9-108 to 9-115, 9-123 to 9-128 shall devolve upon the other, and in the absence from Washington of both it shall devolve upon the Capitol Police Board: Provided, that notwithstanding the provisions of §§ 9-113 and 9-124, the Capitol Police Board is hereby authorized to grant the Mayor of the District of Columbia authority to permit the use of Louisiana Avenue for any of the purposes prohibited by said § 9-113. (July 31, 1946, 60 Stat. 719, ch. 707, § 12; 1973 Ed., § 9-129.)

Section references. — This section is referred to in §§ 9-113, 9-114, 9-115, 9-123, 9-126, 9-128, and 9-142.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see *Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization* in Volume 1). Section 401 of *Reorganization Plan No. 3 of 1967* (see *Reorganization Plans* in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-126. Same — Concerts.

Nothing in §§ 9-106, 9-108 to 9-115, 9-123 to 9-125 shall be construed to prohibit the giving of concerts in the United States Capitol Grounds, at such times as will not interfere with the Congress, by any band in the service of the United States, when and as authorized by the Architect of the Capitol. (July 31, 1946, 60 Stat. 720, ch. 707, § 13; 1973 Ed., § 9-130.)

Section references. — This section is referred to in §§ 9-114, 9-115, 9-123, 9-125, 9-128, and 9-142.

§ 9-127. Same — Traffic regulations by Capitol Police Board.

(a) The Capitol Police Board, consisting of the Sergeant at Arms of the United States Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol, shall have exclusive charge and control of the regulation and movement of all vehicular and other traffic, including the parking and impounding of vehicles and limiting the speed thereof, within the United States Capitol Grounds; and said Board is hereby authorized and empowered to make and enforce all necessary regulations therefor and to prescribe penalties for violation of such regulations, such penalties not to exceed a fine of \$300 or imprisonment for not more than 90 days. Notwithstanding the foregoing provisions of this section those provisions of Chapters 3 and 7 of Title 40, for the violation of which specific penalties are provided in said Chapters, shall be applicable to the United States Capitol Grounds. Except as provided in Chapter 6 of Title 40, prosecutions for violation of such regulations shall be in the Superior Court of the District of Columbia, upon information by the Corporation Counsel of the District of Columbia or any of his assistants.

(b) Regulations authorized to be promulgated under this section shall be promulgated by the Capitol Police Board and such regulations may be amended from time to time by the Capitol Police Board whenever it shall deem it necessary: Provided, that until such regulations are promulgated and become effective, the traffic regulations of the District of Columbia shall be applicable to the United States Capitol Grounds.

(c) All regulations promulgated under the authority of this section shall, when adopted by the Capitol Police Board, be printed in 1 or more of the daily newspapers published in the District of Columbia, and shall not become effective until the expiration of 10 days after the date of such publication, except that whenever the Capitol Police Board deems it advisable to make effective immediately any regulation relating to parking, diverting of vehicular traffic, or the closing of streets to such traffic, the regulation shall be effective immediately upon placing at the point where it is to be in force conspicuous signs containing a notice of the regulation. Any expenses incurred under this subsection shall be payable from the appropriation "Uniforms and Equipment, Capitol Police."

(d) It shall be the duty of the Mayor of the District of Columbia, or any officer or employee of the government of the District of Columbia designated by said Mayor, upon request of the Capitol Police Board, to cooperate with the Board in the preparation of the regulations authorized to be promulgated under this section, and any future amendments thereof. (July 31, 1946, 60 Stat. 720, ch. 707, § 14; July 11, 1947, 61 Stat. 308, ch. 221, §§ 1, 2; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 9-131; Dec. 24, 1973, 87 Stat. 829, Pub. L. 93-198, title VII, § 739(g)(6); May 15, 1993, D.C. Law 9-272, § 201, 40 DCR 796.)

Section references. — This section is referred to in §§ 9-114, 9-115, 9-123, 9-125, 9-128, 9-142, 40-611, and 40-621.

Effect of amendments. — D.C. Law 9-272 in (a) in the third sentence inserted "Except as provided in Chapter 6 of Title 40."

Legislative history of Law 9-272. — See note to § 9-130.1.

Severability of Public Law 93-198. — As to severability of Public Law 93-198, the District of Columbia Self-Government and Governmental Reorganization Act, see § 762 of the act, set forth in Volume 1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Right to arrest. — Capitol Police have jurisdiction to act upon traffic tie-up on boundary street of the Capitol Grounds and, therefore, have the right to arrest if a misdemeanor is committed in their presence. *Anderson v. United States*, App. D.C., 132 A.2d 155, aff'd, 253 F.2d 335 (D.C. Cir. 1957), cert. denied, 357 U.S. 930, 78 S. Ct. 1375, 2 L. Ed. 2d 1372 (1958).

Cited in *Madison v. United States*, App. D.C., 512 A.2d 279 (1986).

§ 9-128. Definitions.

As used in §§ 9-106, 9-108 to 9-115, 9-123 to 9-128:

(1) The term "Capitol Buildings" means the United States Capitol, the Senate and House Office Buildings and garages, the Capitol Power Plant, all subways and enclosed passages connecting 2 or more of such structures, and the real property underlying and enclosed by any such structure.

(2) The term "firearm" shall have the same meaning as when used in § 901(3) of Title 15, United States Code.

(3) The term "dangerous weapon" includes all articles enumerated in § 22-3214(a) and also any device designed to expel or hurl a projectile capable of causing injury to persons or property, daggers, dirks, stilettos, and knives having blades over 3 inches in length.

(4) The term "explosive" shall have the same meaning as when used in § 121(1) of Title 50, United States Code.

(5) The term "act of physical violence" means any act involving:

(A) An assault or any other infliction or threat of infliction of death or bodily harm upon any individual; or

(B) Damage to or destruction of any real property or personal property. (July 31, 1946, 60 Stat. 721, ch. 707, § 16(a); Oct. 20, 1967, 81 Stat. 277, Pub. L. 90-108, § 1(d); 1973 Ed., § 9-132.)

Section references. — This section is referred to in §§ 1-244, 1-2002, 9-114, 9-115, 9-123, 9-125, and 9-142.

References in text. — Section 901(3) of Title 15, United States Code, referred to in paragraph (2) of this section, was repealed by

the Act of June 19, 1968, 82 Stat. 234, Pub. L. 90-351, § 906.

Section 121(1) of Title 50, United States Code, referred to in paragraph (4) of this section, was repealed by the Act of October 15, 1970, 84 Stat. 960, Pub. L. 91-452, § 1106(a).

§ 9-129. Control of District of Columbia buildings.

All buildings belonging to the District of Columbia shall be under the jurisdiction and control of the Mayor of the District of Columbia. (June 29, 1937, 50 Stat. 377, ch. 403, § 1; 1973 Ed., § 9-133.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-130. Designation of District employees to protect life and property outside the District; powers of arrest; weapons and uniforms.

(a) The Mayor of the District of Columbia may designate any employee of the District to protect life and property in and on the buildings and grounds of any institution upon land outside the District acquired by the United States for the District of Columbia for the establishment or operation thereon of any sanatorium, hospital, training school, correctional institution, reformatory, workhouse, or jail: Provided, that such employee shall be bonded for the faithful discharge of such duties, and the Council of the District of Columbia shall fix the penalty of any such bond. Whenever any employee is so designated he is hereby authorized and empowered:

(1) To arrest under a warrant within the buildings and grounds of any such institution any person accused of having committed within any such buildings or grounds any offense against the laws of the United States, or against any rule or regulation prescribed pursuant to §§ 9-130 to 9-134;

(2) To arrest without a warrant any person committing any such offense within such buildings or grounds, in his presence; or

(3) To arrest without warrant within such buildings or grounds, any person whom he has reasonable grounds to believe has committed a felony in such buildings or grounds.

(b) Any individual having the power to arrest as provided in subsection (a) of this section may carry firearms or other weapons and shall wear such uniform with such identification badge as the Mayor may direct or the Council by regulation may prescribe. (July 3, 1956, 70 Stat. 488, ch. 508, § 1; 1973 Ed., § 9-134.)

Section references. — This section is referred to in §§ 9-130.1 and 9-132 to 9-134.

Restriction on use of funds. — Section 133 of Pub. L. 102-382, the District of Columbia Appropriations Act, 1993, provided that none of

the funds made available in this Act may be used by the District of Columbia to operate, after June 1, 1993, the juvenile detention facility known as the Cedar Knoll Facility, and the Mayor shall transmit a plan and timetable for

closing the Cedar Knoll Facility to the Committees on Appropriations of the House of Representatives and the Senate by January 15, 1993.

Authority to Director of Department of Administrative Services delegated. — See Mayor's Order 85-4, January 17, 1985.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (188, 189) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of

Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-130.1. Escape from juvenile facilities.

No child who has been committed to a juvenile facility shall escape or attempt to escape from a District of Columbia institution described in § 9-130. No person shall aid or abet any person to violate this section. (July 3, 1956, ch. 508, § 1a, as added May 15, 1993, D.C. Law 9-272, § 106, 40 DCR 796; ———, 1995, D.C. Law 10- (Act 10-302), § 13, 41 DCR 5193.)

Effect of amendments. — D.C. Law 9-272 added this section.

D.C. Law 10- (Act 10-302) validated a previously made spelling correction.

Legislative history of Law 9-272. — Law 9-272, the "Air Pollution Control Act of 1984 National Ambient Air Quality Standards Attainment Temporary Act of 1992," was introduced in Council and assigned Bill No. 9-374, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1972, and December 15, 1972, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-401 and transmitted to both Houses of

Congress for its review. D.C. Law 9-272 became effective on May 15, 1993.

Legislative history of Law 10- (Act 10-302). — Law 10- (Act 10-302), the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10- (Act 10-302) is projected to become law on May 25, 1995.

§ 9-131. Council authorized to make rules and regulations.

The Council of the District of Columbia may make and amend such rules and regulations as it deems necessary for the protection of life and property in or on the buildings and grounds of any such institution. (July 3, 1956, 70 Stat. 488, ch. 508, § 2; 1973 Ed., § 9-135.)

Section references. — This section is referred to in §§ 9-132 to 9-134.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402

(190) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the Dis-

trict of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-132. Penalty for violation of rules and regulations.

Any person who knowingly and willfully violates any rule or regulation prescribed under §§ 9-130 to 9-134 shall be guilty of a misdemeanor, and shall be fined not more than \$500 or imprisoned not more than 6 months or both. (July 3, 1956, 70 Stat. 488, ch. 508, § 3; 1973 Ed., § 9-136.)

Section references. — This section is referred to in §§ 9-133 and 9-134.

§ 9-133. Acceptance of collateral for appearance before United States Magistrate; deposit of collateral.

The officer on duty in command of those employees designated by the Mayor of the District of Columbia as provided in § 9-130 may accept deposit of collateral from any person charged with the violation of any rule or regulation prescribed under §§ 9-130 to 9-134, for appearance in court or before the appropriate United States Magistrate; and such collateral shall be deposited with the United States Magistrate sitting in the district where the offense has been committed. (July 3, 1956, 70 Stat. 488, ch. 508, § 4; 1973 Ed., § 9-137.)

Section references. — This section is referred to in §§ 9-132 and 9-134.

References in text. — The Act of October 17, 1968, Pub. L. 90-578, terminated the Office of United States Commissioner and established in place thereof the Office of United States Magistrate. The Act became operative in the District of Columbia on June 27, 1969, when 2 United States Magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-134. Reciprocal agreements with states.

The Mayor of the District of Columbia may enter into agreements with any of the states, or any political subdivision thereof, where any such institution mentioned in § 9-130 is located, for such governmental services as the Mayor shall deem necessary to the efficient and proper government of such institution, and they may, from time to time, agree to modifications in any such agreement: Provided, that where the charge for any such service is established by the laws of the state within whose territorial limits such institution is

situated, the Mayor may not pay for such service an amount in excess of the charge so established. There is hereby authorized to be appropriated such sums as may be necessary for the making of payment for services under any such agreement. (July 3, 1956, 70 Stat. 488, ch. 508, § 5; 1973 Ed., § 9-138.)

Section references. — This section is referred to in §§ 9-130, 9-132, and 9-133.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-135. Tunnel under Capitol Grounds and Botanic Garden grounds — Required.

The Mayor of the District of Columbia is authorized and directed, in constructing, maintaining, and operating a vehicular tunnel in the City of Washington, District of Columbia, extending from the vicinity of 2nd and C Streets Southwest, to the vicinity of 3rd and Constitution Avenue Northwest, as a part of the Innerloop Freeway System, to locate a portion of such tunnel under square W-576, which is a part of the United States Botanic Garden grounds, and reservation 12, which is a part of the United States Capitol Grounds. (July 21, 1964, 78 Stat. 333, Pub. L. 88-381, § 1; 1973 Ed., § 9-139.)

Section references. — This section is referred to in §§ 9-137 to 9-139.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-136. Same — Construction.

Subject to the approval of the Architect of the Capitol and to such conditions as he may prescribe, the Mayor of the District of Columbia is authorized to make such use of square W-576 and reservations 12 and 6B as may be necessary for the construction of the tunnel, including borings and other preliminary work and storing of materials, and the reconstruction of that section of the Tiber Creek sewer located under square W-576 and reservation 6B. (July 21, 1964, 78 Stat. 334, Pub. L. 88-381, § 2; 1973 Ed., § 9-140.)

Section references. — This section is referred to in §§ 9-137 to 9-139.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-137. Same — Right, title and interest to remain in the United States; jurisdiction and responsibility of Mayor.

Except as provided in § 9-140, nothing in §§ 9-135 to 9-141 shall be construed to grant to the Mayor of the District of Columbia any right, title, or interest in or to any real property of the United States, and reservation 12 shall in its entirety continue to be a part of the United States Capitol Grounds, and square W-576 shall in its entirety continue to be a part of the United States Botanic Garden grounds. The Mayor shall have jurisdiction and control of, and sole responsibility for the operation and maintenance of, those portions of the tunnel beneath square W-576 and reservation 12. (July 21, 1964, 78 Stat. 334, Pub. L. 88-381, § 3; 1973 Ed., § 9-141.)

Section references. — This section is referred to in §§ 9-138 and 9-139.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-138. Same — Restoration of grounds to original condition.

All areas of square W-576 and reservations 12 and 6B disturbed by reason of operations under §§ 9-135 to 9-141 shall, except as otherwise provided in §§ 9-135 to 9-141, be restored to their original condition to the satisfaction of the Architect of the Capitol. (July 21, 1964, 78 Stat. 334, Pub. L. 88-381, § 4; 1973 Ed., § 9-142.)

§ 9-139. Same — United States not to incur expense or liability.

Except as provided in § 9-140, the United States shall not incur any expense or liability whatsoever under or by reason of §§ 9-135 to 9-141, or be liable under any claim of any nature or kind that may arise from the construction, or the operation or maintenance, of that portion of the tunnel authorized by §§ 9-135 to 9-141. (July 21, 1964, 78 Stat. 334, Pub. L. 88-381, § 5; 1973 Ed., § 9-143.)

§ 9-140. Conveyance of real property for Innerloop Freeway System.

The Architect of the Capitol is authorized to convey to the Mayor of the District of Columbia, for purposes of constructing the Innerloop Freeway System, all, or so much as he determines necessary, of the right, title, and interest of the United States in and to reservations 6B, 6C, 6D, 6E, 6F, and 286 in the District of Columbia. Any real property conveyed under this section shall thereafter be under the sole jurisdiction and control of the Mayor of the District of Columbia. (July 21, 1964, 78 Stat. 334, Pub. L. 88-381, § 6; 1973 Ed., § 9-144.)

Section references. — This section is referred to in §§ 9-137 to 9-139.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-141. Area authorized for construction of vehicular tunnel; conditions.

Notwithstanding the joint resolution entitled "Joint resolution providing for the construction and maintenance of a National Gallery of Art", approved March 24, 1937 (50 Stat. 51; 20 U.S.C. § 71), the Mayor of the District of Columbia is authorized to use the east 65 feet of the area bounded by 4th Street, Pennsylvania Avenue, 3rd Street, and North Mall Drive Northwest, in the District of Columbia for the construction and maintenance of a vehicular tunnel, on condition that after such construction is completed:

- (1) The surface thereof is maintained at its original grade;
- (2) No portion of the tunnel, including ventilating equipment and utilities, is nearer the surface than 8 feet; and
- (3) The surface ingress and egress to such property is not limited. (July 21, 1964, 78 Stat. 334, Pub. L. 88-381, § 7; 1973 Ed., § 9-145.)

Section references. — This section is referred to in §§ 9-137 to 9-139.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-142. National Capital Service Area.

(a) There is established within the District of Columbia the National Capital Service Area which shall include, subject to the following provisions of this section, the principal federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol Building, and is more particularly described in subsection (e) of this section.

(b) There is established in the Executive Office of the President the National Capital Service Director who shall be appointed by the President. The President, through the National Capital Service Director, shall assure that there is provided, utilizing District of Columbia governmental services to the extent practicable, within the area specified in subsection (a) of this section and particularly described in subsection (e) of this section, adequate fire protection and sanitation services. Except with respect to that portion of the National Capital Service Area comprising the United States Capitol Buildings and Grounds as defined in §§ 9-106 and 9-128, the United States Supreme Court Building and Grounds as defined in § 11 of the Act of August 18, 1949, as amended (40 U.S.C. § 13p), and the Library of Congress Buildings and Grounds as defined in § 11 of the Act of August 4, 1950, as amended (2 U.S.C. § 167j), the National Capital Service Director shall assure that there is provided within the remainder of such area specified in subsection (a) and subsection (e), adequate police protection and maintenance of streets and highways.

(c) The National Capital Service Director shall be entitled to receive compensation at the maximum rate as may be established from time to time for level IV of the Executive Schedule of § 5314 of Title 5 of the United States Code. The Director may appoint, subject to the provisions of Title 5 of the United States Code governing appointments in the competitive service, and fix the pay of, in accordance with the provisions of Chapter 51 and subchapter III of Chapter 53 of such title relating to classification and General Schedule pay rates, such personnel as may be necessary.

(d)(1) Within 1 year after January 2, 1975, the President is authorized and directed to submit to the Congress a report on the feasibility and advisability of combining the Executive Protective Service and the United States Park

Police within the National Capital Service Area, and placing them under the National Capital Service Director.

(2) Such report shall include such recommendations, including recommendations for legislative and executive action, as the President deems necessary in carrying out the provisions of paragraph (1) of this subsection.

(e)(1)(A) The National Capital Service Area referred to in subsection (a) of this section is more particularly described as follows: Beginning at that point on the present Virginia-District of Columbia boundary due west of the northernmost point of Theodore Roosevelt Island and running due east to the eastern shore of the Potomac River; thence generally south along the shore at the mean high water mark to the northwest corner of the Kennedy Center; thence east along the north side of the Kennedy Center to a point where it reaches the E Street Expressway; thence east on the expressway to E Street Northwest and thence east on E Street Northwest to 18th Street Northwest; thence south on 18th Street Northwest to Constitution Avenue Northwest; thence east on Constitution Avenue to 17th Street Northwest; thence north on 17th Street Northwest to Pennsylvania Avenue Northwest; thence east on Pennsylvania Avenue to Jackson Place Northwest; thence north on Jackson Place to H Street Northwest; thence east on H Street Northwest to Madison Place Northwest; thence south on Madison Place Northwest to Pennsylvania Avenue Northwest; thence east on Pennsylvania Avenue Northwest to 15th Street Northwest; thence south on 15th Street Northwest to Pennsylvania Avenue Northwest; thence southeast on Pennsylvania Avenue Northwest to John Marshall Place Northwest; thence north on John Marshall Place Northwest to C Street Northwest; thence east on C Street Northwest to 3rd Street Northwest; thence north on 3rd Street Northwest to D Street Northwest; thence east on D Street Northwest to 2nd Street Northwest; thence south on 2nd Street Northwest to the intersection of Constitution Avenue Northwest and Louisiana Avenue Northwest; thence northeast on Louisiana Avenue Northwest to North Capitol Street; thence north on North Capitol Street to Massachusetts Avenue Northwest; thence southeast on Massachusetts Avenue Northwest so as to encompass Union Square; thence following Union Square to F Street Northeast; thence east on F Street Northeast to 2nd Street Northeast; thence south on 2nd Street Northeast to D Street Northeast; thence west on D Street Northeast to 1st Street Northeast; thence south on 1st Street Northeast to Maryland Avenue Northeast; thence generally north and east on Maryland Avenue to 2nd Street Northeast; thence south on 2nd Street Northeast to C Street Southeast; thence west on C Street Southeast to New Jersey Avenue Southeast; thence south on New Jersey Avenue Southeast to D Street Southeast; thence west on D Street Southeast to Canal Street Parkway; thence southeast on Canal Street Parkway to E Street Southeast; thence west on E Street Southeast to the intersection of Canal Street Southwest and South Capitol Street; thence northwest on Canal Street Southwest to 2nd Street Southwest; thence south on 2nd Street Southwest to Virginia Avenue Southwest; thence generally west on Virginia Avenue to 3rd Street Southwest; thence north on 3rd Street Southwest to C Street Southwest; thence west on C Street Southwest to 6th Street Southwest; thence north on 6th Street South-

west to Independence Avenue; thence west on Independence Avenue to 12th Street Southwest; thence south on 12th Street Southwest to D Street Southwest; thence west on D Street Southwest to 14th Street Southwest; thence south on 14th Street Southwest to the middle of the Washington Channel; thence generally south and east along the mid-channel of the Washington Channel to a point due west of the northern boundary line of Fort Lesley McNair; thence due east to the side of the Washington Channel; thence following generally south and east along the side of the Washington Channel at the mean high water mark, to the point of confluence with the Anacostia River, and along the northern shore at the mean high water mark to the northern most point of the 11th Street Bridge; thence generally south and east along the northern side of the 11th Street Bridge to the eastern shore of the Anacostia River; thence generally south and west along such shore at the mean high water mark to the point of confluence of the Anacostia and Potomac Rivers; thence generally south along the eastern shore at the mean high water mark of the Potomac River to the point where it meets the present southeastern boundary line of the District of Columbia; thence south and west along such southeastern boundary line to the point where it meets the present Virginia-District of Columbia boundary; thence generally north and west up the Potomac River along the Virginia-District of Columbia boundary to the point of beginning.

(B) Where the area in subparagraph (A) of this paragraph is bounded by any street, such street, and any sidewalk thereof, shall be included within such area.

(2) Any federal real property affronting or abutting, as of December 24, 1973, the area described in paragraph (1) of this subsection shall be deemed to be within such area.

(3) For the purposes of paragraph (2) of this subsection, federal real property affronting or abutting such area described in paragraph (1) of this subsection shall:

(A) Be deemed to include, but not limited to, Fort Lesley McNair, the Washington Navy Yard, the Anacostia Naval Annex, the United States Naval Station, Bolling Air Force Base, and the Naval Research Laboratory; and

(B) Not be construed to include any area situated outside of the District of Columbia boundary as it existed immediately prior to December 24, 1973, nor be construed to include any portion of the Anacostia Park situated east of the northern side of the 11th Street Bridge, or any portion of the Rock Creek Park.

(f)(1) Subject to the provisions of paragraph (2) of this subsection, the President is authorized and directed to conduct a survey of the area described in this section in order to establish the proper metes and bounds of such area, and to file, in such manner and at such place as he may designate, a map and a legal description of such area, and such description and map shall have the same force and effect as if included in this Act, except that corrections of clerical, typographical and other errors in any such legal descriptions and map may be made. In conducting such survey, the President shall make such adjustments as may be necessary in order to exclude from the National Capital

Service Area any privately owned properties, and buildings and adjacent parking facilities owned by the District of Columbia government.

(2) In carrying out the provisions of paragraph (1) of this subsection, the President shall, to the extent that such survey, legal description, and map involves areas comprising the United States Capitol Buildings and Grounds as defined in §§ 9-106 and 9-128, and other buildings and grounds under the care of the Architect of the Capitol, consult with the Architect of the Capitol.

(g)(1) Except to the extent specifically provided by the provisions of this section, and amendments made by this section, nothing in this section shall be applicable to the United States Capitol Buildings and Grounds as defined in §§ 9-106 and 9-128, or to any other buildings and grounds under the care of the Architect of the Capitol, the United States Supreme Court Building and Grounds as defined in § 11 of the Act of August 18, 1949, as amended (40 U.S.C. § 13p), and the Library of Congress Buildings and Grounds as defined in § 11 of the Act of August 4, 1950, as amended (2 U.S.C. § 167j), and except to the extent herein specifically provided, including amendments made by this section, nothing in this section shall be construed to repeal, amend, alter, modify, or supersede any provision of §§ 9-106, 9-108 to 9-115, 9-123 to 9-128, or any other of the general laws of the United States or any of the laws enacted by the Congress and applicable exclusively to the District of Columbia, or any rule or regulation promulgated pursuant thereto, in effect on the date immediately preceding January 2, 1975, pertaining to said buildings and grounds, or any existing authority, with respect to such buildings and grounds, vested by law, or otherwise, on such date immediately preceding January 2, 1975, in the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, or the Librarian of Congress.

(2) Notwithstanding the foregoing provision of this section, any of the services and facilities authorized by this Act to be rendered or furnished (including maintenance of streets and highways, and services under § 1-1131) shall, as far as practicable, be made available to the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch vested by law or otherwise on such date immediately preceding January 2, 1975, with authority over such buildings and grounds, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, and the Librarian of Congress, upon their request, and, if payment would be required for the rendition or furnishing of a similar service or facility to any other federal agency, payment therefor shall be made by the recipient thereof, upon presentation of proper vouchers, in advance or by reimbursement (as may be agreed upon by the parties rendering and receiving such services).

(h) Except to the extent otherwise specifically provided in the provisions of this section, and amendments made by this section, all general laws of the United States and all laws enacted by the Congress and applicable exclusively

to the District of Columbia, including regulations and rules promulgated pursuant thereto, in effect on the date immediately preceding January 2, 1975, and which, on such date immediately preceding January 2, 1975, are applicable to and within the areas included within the National Capital Service Area pursuant to this section shall, on and after January 2, 1975, continue to be applicable to and within such National Capital Service Area in the same manner and to the same extent as if this section had not been enacted, and shall remain so applicable until such time as they are repealed, amended, altered, modified, or superseded, and such laws, regulations and rules shall thereafter be applicable to and within such area in the manner and to the extent so provided by any such amendment, alteration, or modification.

(i) In no case shall any person be denied the right to vote or otherwise participate in any manner in any election in the District of Columbia solely because such person resides within the National Capital Service Area. (Dec. 24, 1973, 81 Stat. 825, Pub. L. 93-198, title VII, § 739; 1973 Ed., § 9-146.)

References in text. — “Level IV of the Executive Schedule of § 5314 of Title 5, U.S.C.”, referred to in subsection (c), is Level III.

“Section 1-1131”, referred to in subsection (g)(2), was repealed September 13, 1982, 96 Stat. 877, Pub. L. 97-258, § 5(b).

The “Executive Protective Service”, referred to in subsection (e) was changed to “United States Secret Service Uniformed Division” by the Act of November 15, 1977, 91 Stat. 1371, Pub. L. 95-179.

Delegation of functions. — Executive Order No. 11815, October 23, 1974, 39 F.R. 37963,

provided that the President of the United States, under § 739(g) of the District of Columbia Self-Government and Governmental Reorganization Act, could authorize and direct the Chairman of the National Capital Planning Commission to carry out all duties vested in the President by § 739(g) with respect to the establishment of the metes and bounds of the National Capital Service Area.

Definitions applicable. — The definitions in § 1-202 apply to this section.

Cited in *ITEL Corp. v. District of Columbia*, App. D.C., 448 A.2d 261, cert. denied, 459 U.S. 1087, 103 S. Ct. 570, 74 L. Ed. 2d 932 (1982).

CHAPTER 2. CONSTRUCTION OF PUBLIC BUILDINGS.

Sec.	Sec.
9-201. Municipal center — Authorization to acquire property.	9-211. Limitations on borrowing.
9-202. Same — Rental.	9-212. Interest on funds borrowed from Administrator of General Services.
9-203. Public buildings — Loans for construction authorized; projects enumerated.	9-213. Advice of Secretary of Treasury regarding interest rate.
9-204. Same — Availability of funds for acquiring lands for public uses.	9-214. Authorization for advancements for Office of Recorder of Deeds.
9-205. Same — Reimbursement.	9-215. Purposes for which advancements may be used.
9-206. Same — Annual report submitted to Congress.	9-216. Repayment of advancements; interest.
9-207. Authorization to borrow money from the United States for public works.	9-217. Annual report submitted to Congress.
9-208. Purposes for which borrowed moneys may be used.	9-218. Preparation of plans and specifications.
9-209. Repayment of borrowed moneys.	9-219. Program of construction to meet capital needs authorized; contents.
9-210. Annual report concerning borrowed moneys submitted to Congress.	9-220. Construction Services Fund.

§ 9-201. Municipal center — Authorization to acquire property.

The Council of the District of Columbia is authorized and directed to acquire by purchase, condemnation, or otherwise, all of squares no. 490, 491, 533, and reservation 10, in the District of Columbia, including buildings and other structures thereon, as a site for a municipal center, and to construct thereon necessary buildings to house municipal activities: Provided, that the Council is hereby authorized to close and vacate such portions of streets and alleys as lie between or within such squares, as in the judgment of said Council may be necessary, and the portions of such streets and alleys so closed and vacated shall thereupon become parts of such sites: Provided further, that if this property or any part thereof shall be condemned, the Mayor of the District of Columbia shall be entitled to enter immediately into the possession of any such property for which an award shall have been made by paying the amount of such award into the Registry of the Superior Court of the District of Columbia. (Feb. 28, 1929, 45 Stat. 1408, ch. 379, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(29); 1973 Ed., § 9-201.)

Cross references. — As to acceptance and maintenance of memorial fountain for Metropolitan Police Department, see § 4-1101.

As to streets, see § 7-102.

As to rules and regulations for wharf property, see §§ 9-101 and 9-102.

As to construction of Children's Tuberculosis Sanitarium, see § 32-112.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(191) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the Dis-

trict of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-202. Same — Rental.

The Mayor of the District of Columbia is authorized in his discretion to rent, until their removal becomes necessary, at fair rental values, buildings acquired by the District in the municipal center, and to use such part of the rentals heretofore and hereafter collected as may be necessary for expenses of collection, repairs, and alterations to buildings by day labor or otherwise, expenses of moving and preservation and operating expenses of such buildings as may continue in private occupancy, the balance of the rentals to be covered into the Treasury to the credit of the revenues of the District of Columbia. (July 3, 1930, 46 Stat. 957, ch. 848; 1973 Ed., § 9-202.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-203. Public buildings — Loans for construction authorized; projects enumerated.

The Mayor of the District of Columbia is hereby authorized to borrow for the District of Columbia from the Federal Emergency Administration of Public Works created by the National Industrial Recovery Act (which, for the purposes of §§ 9-203 to 9-206, shall be construed to include any agency created or designated by the President for similar purposes under the Emergency Relief Appropriation Act of 1935); and said Administration is authorized to lend to said Mayor the sum of \$10,750,000, or any part thereof, out of funds authorized by law for said Administration, for the acquisition, purchase, construction, establishment, and development of a tuberculosis hospital, a sewage-disposal plant, an extension of or addition to Gallinger Municipal Hospital, a jail or other enclosure for prisoners at Lorton, Virginia, and a building or buildings for the Police Court, the Municipal Court, the Recorder of Deeds, and the Juvenile Court, or any of them, said court buildings to be located on such portions or parts of Judiciary Square, or the area bounded by 4th and 5th Streets, D and G Streets, Northwest, as shall be approved by said Mayor, and the National Capital Planning Commission, or any one or more of said projects as the said Mayor may determine; and to advance to the Children's Hospital of the District of Columbia in compensation for clinical

examination of tubercular children, the sum of \$100,000 or so much thereof as may be necessary for alterations and enlargement of building, equipment, and accessories. (June 25, 1934, 48 Stat. 1215, ch. 743, § 1; May 6, 1935, 49 Stat. 174, ch. 91, § 1; 1973 Ed., § 9-204.)

Cross references. — As to limitation on borrowing power, see § 9-211.

Section references. — This section is referred to in §§ 9-204 to 9-206, 9-211, and 9-212.

References in text. — Act of April 1, 1942, 56 Stat. 190, ch. 207, § 1, consolidated the Police Court and the Municipal Court into a single court, to be known as "The Municipal Court for the District of Columbia". Act of July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1, changed the name of the court to the "District of Columbia Court of General Sessions". Act of July 29, 1970, 84 Stat. 570, Pub. L. 91-358, § 155(a), changed the name of the court to Superior Court of the District of Columbia.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The Federal Emergency Administration of Public Works was consolidated into the Federal Works Agency to be administered by the Public Works Administration by 1939 Reorganization Plan No. 1, §§ 301, 305, 4 F.R. 2729, 53 Stat. 1426. All functions of the Public Works Administration and the Commissioner of Public Works, in the Federal Works Agency, were transferred to the Federal Works Administrator by Executive Order No. 9357, June 30, 1943, 8 F.R. 9041. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. Both the Federal Works Agency and the Office of Federal Works Administrator were abolished by § 103(b) of the Act of June 30, 1949.

The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

§ 9-204. Same — Availability of funds for acquiring lands for public uses.

The sum authorized by § 9-203, or any part thereof, shall, when borrowed, be available to the Mayor of the District of Columbia for the acquisition by dedication, purchase, or condemnation of the fee simple title to land, or rights or easements in land, for the public uses authorized by §§ 9-203 to 9-206, and for the preparation of plans, designs, estimates, models, and contracts, for architectural, and other necessary professional services, without reference to § 5 of Title 41, United States Code, for the construction of buildings, including materials and labor, heating, lighting, elevators, plumbing, landscaping, and all other appurtenances, and the purchase and installation of machinery, apparatus, and any and all other expenditures necessary for or incident to the complete construction of the aforesaid buildings and plants. All contracts, agreements, and proceedings in court for condemnation or otherwise, pursuant to §§ 9-203 to 9-206, shall be had and made in accordance with existing provisions of law, except as otherwise herein provided. (June 25, 1934, 48 Stat. 1215, ch. 743, § 2; 1973 Ed., § 9-205.)

Section references. — This section is referred to in §§ 9-203, 9-205, 9-211, and 9-212.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-205. Same — Reimbursement.

Seventy per centum of so much of said sum authorized by § 9-203 as may be expended as therein provided shall be reimbursed to the Federal Emergency Administration of Public Works from any funds in the Treasury to the credit of the District of Columbia, as follows, to wit: Not less than \$1,000,000 on the 30th day of June each year after such sum shall have been advanced to said District until the full amount expended hereunder is reimbursed, without interest for the 1st 3 years after any such advances and with interest at not exceeding 4 per centum per year thereafter on annual balances as of each June 30th: Provided, that whenever the District of Columbia is under obligation by virtue of the provisions of § 4 of Public Act No. 284, 71st Congress, entitled "An Act for the acquisition, establishment, and development of the George Washington Memorial Parkway, and so forth," approved May 29, 1930 (46 Stat. 485, ch. 354), to reimburse the United States for sums appropriated by the Congress under that Act, the total reimbursement required under both that Act and §§ 9-203 to 9-206 shall be not less nor more than \$1,300,000 in any 1 fiscal year: Provided, that the Mayor of the District of Columbia may, in his discretion, repay more than said amount: And provided further, that the Mayor may, in his discretion, allocate any reimbursement as between the sums due by him to the United States under the aforesaid Act and the sums due by him to the Federal Emergency Administration of Public Works under §§ 9-203 to 9-206: Provided, that such sums as may be necessary for the reimbursement herein required of or permitted by the District of Columbia, and for the payment of interest, shall be included in the annual estimates of the Mayor of the District of Columbia, the 1st reimbursement to be made on June 30, 1936. Until 70 per centum of so much of said sum authorized by § 9-203 as may be expended as therein provided shall be reimbursed to the Federal Emergency Administration of Public Works, with interest as provided in this section, \$.10 of the tax levied and collected upon each \$100 of the assessed valuation of all real and tangible personal property subject to taxation in the District of Columbia shall be deposited in the Treasury of the United States to the credit of a special account for such reimbursement to the Federal Emergency Administration of Public Works and shall not be available for any other purpose. The Mayor may, in his discretion, anticipate from said special account the payments required by §§ 9-203 to 9-206: Provided, that whenever the District of Columbia is under obligation by virtue of the provisions of § 4 of

said Public Act No. 284, 71st Congress, reimbursement shall be not less than \$300,000 in any 1 fiscal year. (June 25, 1934, 48 Stat. 1215, ch. 743, § 3; May 6, 1935, 49 Stat. 175, ch. 91, § 2; 1973 Ed., § 9-206.)

Section references. — This section is referred to in §§ 9-203, 9-204, 9-211, and 9-212.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

Transfer of functions. — The Federal Emergency Administration of Public Works was consolidated into the Federal Works Agency to be administered by the Public Works Administration by 1939 Reorganization Plan No. 1, §§ 301, 305, 4 F.R. 2729, 53 Stat. 1426. All functions of the Public Works Administration and the Commissioner of Public Works, in the Federal Works Agency, were transferred to the Federal Works Administrator by Executive Order No. 9357, June 30, 1943, 8 F.R. 9041. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. Both the Federal Works Agency and the Office of Federal Works Administrator were abolished by § 103(b) of the Act of June 30, 1949.

§ 9-206. Same — Annual report submitted to Congress.

The Mayor of the District of Columbia shall submit with his annual estimates to the Senate and the House of Representatives a report of his activities and expenditures under § 9-203. (June 25, 1934, 48 Stat. 1216, ch. 743, § 4; 1973 Ed., § 9-207.)

Section references. — This section is referred to in §§ 9-203 to 9-205, 9-211, and 9-212.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-207. Authorization to borrow money from the United States for public works.

The Mayor of the District of Columbia is hereby authorized to accept advancements for the District of Columbia from the Federal Emergency Administration of Public Works, created by the National Industrial Recovery Act, and said Administration with the approval of the President is authorized to advance to said Mayor the sum of \$18,150,000, or any part thereof, in

addition to any sums heretofore advanced to the District of Columbia by said Administration, out of funds authorized by law for said Administration, for the acquisition, purchase, construction, establishment, and development of public works, including among others a building or buildings for the Municipal Court, the Recorder of Deeds, and the Juvenile Court, or any of them, said buildings to be located on such portions or parts of Judiciary Square, or the area bounded by 4th and 5th Streets, D and G Streets, Northwest, or upon such other area or areas as shall be approved by said Mayor and the National Capital Planning Commission and the making of such advances is hereby included among the purposes for which funds heretofore appropriated or authorized for said Administration, including funds appropriated by the Public Works Administration Appropriation Act of 1938, may be used, in addition to the other purposes specified in the respective acts appropriating or authorizing said funds. (June 25, 1938, 52 Stat. 1203, ch. 704, § 1; 1973 Ed., § 9-208.)

Section references. — This section is referred to in §§ 9-208 to 9-210, and 9-212.

References in text. — Act of July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Act of July 29, 1970, 84 Stat. 570, Pub. L. 91-358, § 155(a), changed the name of the court to Superior Court of the District of Columbia.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The Federal Emergency Administration of Public Works was consolidated into the Federal Works Agency to be administered by the Public Works Administration by 1939 Reorganization Plan No. 1, §§ 301, 305, 4 F.R. 2729, 53 Stat. 1426. All functions of the Public Works Administration and the Commissioner of Public Works, in the Federal Works Agency, were transferred to the Federal Works Administrator by Executive Order No. 9357, June 30, 1943, 8 F.R. 9041. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. Both the Federal Works Agency and the Office of Federal Works Administrator were abolished by § 103(b) of the Act of June 30, 1949.

The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

§ 9-208. Purposes for which borrowed moneys may be used.

The sum authorized by § 9-207, or any part thereof shall, when advanced, be available to the Mayor of the District of Columbia for the acquisition by dedication, purchase, or condemnation of the fee simple title to land, or rights or easements in land, for the public uses authorized by §§ 9-207 to 9-211, and for the preparation of plans, designs, estimates, models, and specifications, and for architectural and other necessary professional services without reference to § 1-1110, for the construction of buildings, including materials and

labor, heating, lighting, elevators, plumbing, landscaping, and all other appurtenances, and the purchase and installation of machinery, furniture, equipment, apparatus, and any and all other expenditures necessary for or incident to the complete construction and equipment for use of the aforesaid buildings and plants. All contracts, agreements, and proceedings in court for condemnation or otherwise, pursuant to §§ 9-207 to 9-211 shall be had and made in accordance with existing provisions of law except as otherwise herein provided. (June 25, 1938, 52 Stat. 1204, ch. 704, § 2; 1973 Ed., § 9-209.)

Section references. — This section is referred to in § 9-212.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-209. Repayment of borrowed moneys.

The Federal Emergency Administration of Public Works shall be repaid 55 per centum of any moneys advanced under § 9-207 in annual instalments over a period of not to exceed 25 years with interest thereon for the period of amortization: Provided, that such sums as may be necessary for the reimbursement herein required of the District of Columbia, and for the payment of interest, shall be included in the annual estimates of the Mayor of the District of Columbia, the 1st reimbursement to be made on June 30, 1941: Provided further, that whenever the District of Columbia is under obligation by virtue of the provisions of § 4 of Public Act No. 284, 71st Congress, reimbursement under that Act shall be not less than \$300,000 in any 1 fiscal year. (June 25, 1938, 52 Stat. 1204, ch. 704, § 3; 1973 Ed., § 9-210.)

Section references. — This section is referred to in §§ 9-208 and 9-212.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The Federal Emergency Administration of Public Works was consolidated into the Federal Works Agency to be administered by the Public Works Administration by 1939 Reorganization Plan No. 1, §§ 301, 305, 4 F.R. 2729, 53 Stat. 1426. All functions of the Public Works Administration and the Commissioner of Public Works, in the Federal Works Agency, were transferred to the Federal Works Administrator by Executive Order No. 9357, June 30, 1943, 8 F.R. 9041. All functions of the Federal Works Agency and of all agencies thereof, together with all functions

of the Federal Works Administrator, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. Both the Federal Works

Agency and the Office of Federal Works Administrator were abolished by § 103(b) of the Act of June 30, 1949.

§ 9-210. Annual report concerning borrowed moneys submitted to Congress.

The Mayor of the District of Columbia shall submit with his annual estimates to the Congress a report of his activities and expenditures under § 9-207. (June 25, 1938, 52 Stat. 1204, ch. 704, § 4; 1973 Ed., § 9-211.)

Section references. — This section is referred to in §§ 9-208 and 9-212.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-211. Limitations on borrowing.

The Mayor of the District of Columbia is not authorized to borrow any further sum or sums under the provisions of §§ 9-203 to 9-206. (June 25, 1938, 52 Stat. 1204, ch. 704, § 5; 1973 Ed., § 9-212.)

Section references. — This section is referred to in §§ 9-208 and 9-212.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-212. Interest on funds borrowed from Administrator of General Services.

The Administrator of General Services and the Mayor of the District of Columbia are authorized to amend existing contracts and agreements by which funds have been loaned or advanced or are obligated to be loaned or advanced to said Mayor, for the acquisition, purchase, construction, establishment, and development of public works, pursuant to the authority of §§ 9-203 to 9-206, or §§ 9-207 to 9-211, so as to provide for the payment of interest on the amounts of such loans and advances to be repaid to the Administrator of

General Services at such rate as would, in the opinion of the Secretary of the Treasury, be the lowest interest rate available to the District of Columbia were said District authorized by law to issue and sell obligations to the public at the par value thereof, in a sum equal to the repayable amounts of such loans and advances, maturing serially over a period of 15 years in approximately equal annual installments, including both principal and interest, and secured by a 1st pledge of and lien upon all the general-fund revenues of said District. (July 1, 1940, 54 Stat. 706, ch. 494, § 1; 1973 Ed., § 9-213.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The Federal Emergency Administration of Public Works was consolidated into the Federal Works Agency to be administered by the Public Works Administration by 1939 Reorganization Plan No. 1, §§ 301, 305, 4 F.R. 2729, 53 Stat. 1426. All functions of the Public Works Administration and the Commissioner of Public Works, in the Federal Works Agency, were transferred to the Federal Works Administrator by Executive Order No. 9357, June 30, 1943, 8 F.R. 9041. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. Both the Federal Works Agency and the Office of Federal Works Administrator were abolished by § 103(b) of the Act of June 30, 1949.

§ 9-213. Advice of Secretary of Treasury regarding interest rate.

The Secretary of the Treasury is authorized and directed to advise the Administrator of General Services and the Mayor of the District of Columbia of such interest rate which, in his opinion and in the aforesaid circumstances, would be available to the District of Columbia on July 1, 1940. (July 1, 1940, 54 Stat. 706, ch. 494, § 2; 1973 Ed., § 9-214.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The Federal Emergency Administration of Public Works was consolidated into the Federal Works Agency to be administered by the Public Works Administration by 1939 Reorganization Plan No. 1, §§ 301, 305, 4 F.R. 2729, 53 Stat. 1426. All functions of the Public Works Administra-

tion and the Commissioner of Public Works, in the Federal Works Agency, were transferred to the Federal Works Administrator by Executive Order No. 9357, June 30, 1943, 8 F.R. 9041. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, were

transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. Both the Federal Works Agency and the Office of Federal Works Administrator were abolished by § 103(b) of the Act of June 30, 1949.

§ 9-214. Authorization for advancements for Office of Recorder of Deeds.

The Mayor of the District of Columbia is hereby authorized to accept advancements for the District of Columbia from the Federal Emergency Administration of Public Works, or its successor, and said Administration, or its successor, with the approval of the President, is authorized to advance to said Mayor the sum of \$450,000, or any part thereof, in addition to any sums heretofore advanced to the District of Columbia by said Administration, or its successor, out of funds authorized by law for said Administration, or its successor, for a building for the Office of the Recorder of Deeds to be located on premises now known as 515 D Street Northwest, formerly used as the Police Court, as recommended by a committee appointed by the Mayor under order of January 12, 1940, and the making of such advances is hereby included among the purposes for which funds heretofore appropriated or authorized for said Administration or its successor, including funds appropriated by the Public Works Administration Appropriation Act of 1938, may be used, in addition to the other purposes specified in the respective acts appropriating or authorizing said funds. (July 11, 1940, 54 Stat. 757, ch. 583, § 1; 1973 Ed., § 9-215.)

Section references. — This section is referred to in §§ 9-215 to 9-217.

References in text. — Act of April 1, 1942, 56 Stat. 190, ch. 207, § 1, consolidated the Police Court and the Municipal Court into a single court, to be known as "The Municipal Court for the District of Columbia". Act of July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1, changed the name of the court to the "District of Columbia Court of General Sessions". Act of July 29, 1970, 84 Stat. 570, Pub. L. 91-358, § 155(a), changed the name of the court to Superior Court of the District of Columbia.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The Federal Emergency Administration of Public Works was consolidated into the Federal Works Agency to be administered by the Public Works Administration by 1939 Reorganization Plan No. 1, §§ 301, 305, 4 F.R. 2729, 53 Stat. 1426. All functions of the Public Works Administration and the Commissioner of Public Works, in the Federal Works Agency, were transferred to the Federal Works Administrator by Executive Order No. 9357, June 30, 1943, 8 F.R. 9041. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. Both the Federal Works Agency and the Office of Federal Works Administrator were abolished by § 103(b) of the Act of June 30, 1949.

§ 9-215. Purposes for which advancements may be used.

The sum authorized by § 9-214, or any part thereof shall, when advanced, be available to the Mayor of the District of Columbia for the preparation of plans, designs, estimates, models, and specifications; and for architectural and other necessary professional services required for carrying out the provisions of §§ 9-214 to 9-218; and for the construction of a Recorder of Deeds building, including materials and labor, heating, lighting, elevators, plumbing, landscaping, transportation or rental thereof, and all other appurtenances, and the purchase and installation of machinery, furniture, equipment, apparatus, and any and all other expenditures necessary for or incident to the complete construction and equipment for use of the aforesaid building and plant. (July 11, 1940, 54 Stat. 757, ch. 583, § 2; 1973 Ed., § 9-216.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-216. Repayment of advancements; interest.

The Federal Emergency Administration of Public Works, or its successor, shall be repaid 55 per centum of any moneys advanced under § 9-214 in annual instalments over a period of not to exceed 25 years with interest thereon at such rate as is agreed upon by the Mayor of the District and the Federal Emergency Administration of Public Works, or its successor, for the period of amortization: Provided, that such sums as may be necessary for the reimbursement herein required of the District of Columbia, and for the payment of interest, shall be included in the annual estimates of the Mayor of the District of Columbia, the 1st reimbursement with interest to be made not later than June 30, 1944: Provided further, that whenever the District of Columbia is under obligation by virtue of the provisions of § 4 of Public Act No. 284, 71st Congress, 46 Stat. 482, ch. 354, reimbursement under that Act shall not be less than \$300,000 in any 1 fiscal year. (July 11, 1940, 54 Stat. 757, ch. 583, § 3; 1973 Ed., § 9-217.)

Section references. — This section is referred to in § 9-215.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The Federal Emergency Administration of Public Works was consolidated into the Federal Works Agency to be administered by the Public Works Administration by 1939 Reorganization Plan No. 1, §§ 301, 305, 4 F.R. 2729, 53 Stat. 1426. All functions of the Public Works Administra-

tion and the Commissioner of Public Works, in the Federal Works Agency, were transferred to the Federal Works Administrator by Executive Order No. 9357, June 30, 1943, 8 F.R. 9041. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. Both the Federal Works Agency and the Office of Federal Works Administrator were abolished by § 103(b) of the Act of June 30, 1949.

§ 9-217. Annual report submitted to Congress.

The Mayor of the District of Columbia shall submit with his annual estimates to the Congress a report of his activities and expenditures under § 9-214. (July 11, 1940, 54 Stat. 758, ch. 583, § 4; 1973 Ed., § 9-218.)

Section references. — This section is referred to in § 9-215.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-218. Preparation of plans and specifications.

The plans and specifications for all building construction administered by the Mayor of the District of Columbia shall be prepared under the supervision of the Municipal Architect, and shall be approved by the Mayor and all such construction shall be in conformity to such plans and specifications. (July 1, 1943, 57 Stat. 324, ch. 184, § 1; 1973 Ed., § 9-219; May 23, 1990, D.C. Law 8-131, § 3, 37 DCR 2211; June 22, 1990, D.C. Law 8-143, § 3, 37 DCR 2972.)

Section references. — This section is referred to in § 9-215.

Legislative history of Law 8-131. — Law 8-131, the "Board of Education Capital Construction Contracting Authority Temporary Act of 1990," was introduced in Council and assigned Bill No. 8-529. The Bill was adopted on first and second readings on February 27, 1990, and March 13, 1990, respectively. Signed by the Mayor on March 27, 1990, it was assigned Act No. 8-183 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-143. — Law 8-143, the "Board of Education Capital Construction Contracting Authority Act of 1990,"

was introduced in Council and assigned Bill No. 8-504, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 27, 1990, and April 10, 1990, respectively. Signed by the Mayor on April 26, 1990, it was assigned Act No. 8-199 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-219. Program of construction to meet capital needs authorized; contents.

A program of construction to meet capital needs of the government of the District of Columbia is hereby authorized. Such program shall include, without limitation, projects relating to activities to meet the needs of the public in the fields of education, health, welfare, public safety, recreation, and other general government activities. (June 6, 1958, 72 Stat. 183, Pub. L. 85-451, § 1; Aug. 27, 1963, 77 Stat. 130, Pub. L. 88-104, § 2(a), (b); Sept. 8, 1965, 79 Stat. 665, Pub. L. 89-173, § 5(b); Sept. 30, 1966, 80 Stat. 857, Pub. L. 89-610, title VI, § 601; Nov. 7, 1966, 80 Stat. 1434, Pub. L. 89-791, title III, § 301(b); Nov. 3, 1967, 81 Stat. 339, Pub. L. 90-120, title II, §§ 201, 202; Dec. 9, 1969, 83 Stat. 321, Pub. L. 91-143, § 4(b); Jan. 5, 1971, 84 Stat. 1930, Pub. L. 91-650, title I, § 103(a); July 13, 1972, 86 Stat. 466, Pub. L. 92-349, title II, § 201(b); Oct. 21, 1972, 86 Stat. 1002, Pub. L. 92-517, title II, § 201(b); 1973 Ed., § 9-220; Dec. 24, 1973, 87 Stat. 832, Pub. L. 93-198, title VII, § 743(a).)

Cross references. — As to multiyear capital improvements plan, see § 47-303.

Section references. — This section is referred to in § 31-1406.

Severability of Public Law 93-198. — As to severability of Public Law 93-198, the District of Columbia Self-Government and Governmental Reorganization Act, see § 762 of the act, set forth in Volume 1.

Appropriations authorized. — Public Law 103-334, 108 Stat. 2581, the District of Columbia Appropriations Act, 1995, provided for construction projects \$5,600,000, as authorized by §§ 43-1512 through 43-1519; the District of Columbia Public Works Act of 1954, approved May 18, 1954 (68 Stat. 101; Public Law 83-364 [47-1524 and 47-1527]); §§ 9-219 and 47-3404 [section 3(g) of the District of Columbia Motor Vehicle Parking Facility Act of 1942, approved August 20, 1958 (72 Stat. 686; Public Law 85-692; D.C. Code, sec. 40-805(7)); and the National Capital Transportation Act of 1969, approved December 9, 1969 (83 Stat. 320; Public Law 91-143; D.C. Code, secs. 1-2451, 1-2452, 1-2454, 1-2456 and 1-2457);] including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: Provided, That \$140,000 shall be available for project

management and \$110,000 shall be available for design by the Director of the Department of Public Works or by contract for architectural engineering services, as may be determined by the Mayor: Provided further, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: Provided further, That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1996, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1996: *Provided further*, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

Cited in Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics, App. D.C., 441 A.2d 871 (1980), *aff'd* on rehearing, App. D.C., 441 A.2d 889 (1981).

§ 9-220. Construction Services Fund.

(a) There is established in the Treasury of the United States a permanent working fund, without fiscal year limitation, to be known as the Construction Services Fund, Department of General Services, District of Columbia. The Mayor is authorized to transfer to such Fund from capital outlay appropriations for public building construction such amounts as he may deem necessary to carry out the purposes of this section, and, subject to subsequent adjustment, advances and reimbursements may be made to such Fund from appropriations for services to other departments and agencies of the District government, without reference to fiscal year limitations on such appropriations. The Fund shall be available for expenses incurred in the initial planning for construction projects, for work performed under contract or otherwise, including, but not limited to, preliminary planning and related expenses, surveys, preparation of plans and specifications, soil investigation, administration, overhead, planning design, engineering, inspection, and contract management.

(b) The Council of the District of Columbia shall annually review the budget of the Construction Services Fund within 90 days after the annual District of Columbia Appropriations Act is enacted into law.

(c) The Council of the District of Columbia, the Board of Higher Education, the Board of Vocational Education, the Board of Education, the Public Library Board, and the Executive Director of the District of Columbia Court System shall be kept fully advised, at least semiannually, of the status of projects and activities within their respective areas of concern which are financed from the Construction Services Fund. (1973 Ed., § 9-221; Oct. 26, 1973, 87 Stat. 506, Pub. L. 93-140, § 13.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the

District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

CHAPTER 3. REPAIRS AND IMPROVEMENTS.

Sec.

9-301. Authorization to establish working fund.

9-302. Inspection of public buildings for lead paint — Required.

Sec.

9-303. Same — Appropriations.

§ 9-301. Authorization to establish working fund.

On and after July 1, 1954, work performed for repairs and improvements may be by contract or otherwise, except for amounts exceeding \$5,000 which shall be determined by the Mayor of the District of Columbia; and the Mayor is authorized to establish a working fund for such purposes without fiscal year limitation, said fund to be reimbursed for repairs and improvements performed under that fund from funds available for these purposes, and payments are authorized to be made to said fund in advance if required by the Director of the Department of General Services subject to subsequent adjustments, from funds available for necessary expenses, including allowances for privately-owned automobiles. (July 1, 1954, 68 Stat. 393, ch. 449, § 5; July 23, 1959, 73 Stat. 238, Pub. L. 86-104, § 15; Apr. 8, 1960, 74 Stat. 30, Pub. L. 86-412, § 15; 1973 Ed., § 9-501.)

References in text. — The Department of Buildings and Grounds was replaced by the Department of General Services by Commissioner's Order 69-96, dated March 7, 1969.

The functions of the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-302. Inspection of public buildings for lead paint — Required.

(a) The Mayor of the District of Columbia is hereby authorized and directed to inspect for the presence of lead paint in all public buildings and publicly-operated residences belonging to or in the possession of the District of Columbia and regularly frequented by children under 6 years of age. Where there are reasonable grounds to believe that a hazard exists to the health of such children because of the presence of lead or lead compounds in the paint, plaster, or structural materials of any such interior surface, the Mayor shall cause an analysis to be made of the paint, plaster, or structural materials of the interior structure to determine the quantity of lead or lead compounds contained in the material. If the analysis reveals the presence of lead or lead

compounds in a quantity in excess of 1 milligram per square centimeter of surface or in a quantity otherwise sufficient to constitute a hazard to the health of any user of the building, the Mayor shall cause the lead condition to be repaired: Provided, that the repairs shall be of a sufficient quality to equal or exceed that required of private housing located in the District of Columbia pursuant to regulations promulgated with respect to housing in the District of Columbia.

(b) When an inspection mandated by subsection (a) of this section indicates the necessity for a repair, the repair shall begin not later than 10 days after the inspection.

(c) All inspections mandated by subsection (a) of this section shall be commenced within 180 days after October 26, 1977. (1973 Ed., § 9-502; Oct. 26, 1977, D.C. Law 2-28, § 2, 24 DCR 3721.)

Section references. — This section is referred to in § 9-303.

Legislative history of Law 2-28. — Law 2-28, the “Public Property Lead Elimination Act of 1977,” was introduced in Council and assigned Bill No. 2-85, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 28, 1977 and July 12, 1977, respec-

tively. Signed by the Mayor on August 1, 1977, it was assigned Act No. 2-63 and transmitted to both Houses of Congress for its review.

New implementing regulations. — Pursuant to this section, the following new regulations were adopted in 1983: The “Lead-Based Paint Poisoning Prevention Act of 1983” (D.C. Law 5-35, Oct. 8, 1983, 30 DCR 4156).

§ 9-303. Same — Appropriations.

(a) There is hereby authorized to be appropriated from the funds available to the government of the District of Columbia in the budget an amount not to exceed \$1,120,000 for the fiscal year commencing on October 1, 1978, to carry out the purposes of this section and § 9-302: Provided, however, that grant funds available to the government of the District of Columbia may be expended to carry out the purposes of this section and § 9-302 without regard to any limitation in this section.

(b) In each fiscal year commencing on or after October 1, 1979, \$50,000 are authorized to be appropriated to carry out this section and § 9-302: Provided, that authorization is hereby granted to expend funds in any fiscal year commencing on or after October 1, 1979, up to the amount authorized in subsection (a) of this section but not appropriated in the fiscal year commencing on October 1, 1978. (1973 Ed., § 9-503; Oct. 26, 1977, D.C. Law 2-28, § 3, 24 DCR 3721.)

Legislative history of Law 2-28. — See note to § 9-302.

CHAPTER 4. SALE OF PUBLIC LANDS.

Sec.	Sec.
9-401. Authorization; description of property; submission and approval of resolution; reacquisition rights; notice.	9-403. Execution of deeds.
9-401.1. "Real property" defined.	9-404. Secretary of the Interior to sell certain real estate — Authorization.
9-402. Expenses of sale; deposit of net proceeds.	9-405. Same — Solicitation for bids.
	9-406. Same — Expenses of sales.
	9-407. Inventory of real property owned by District.

§ 9-401. Authorization; description of property; submission and approval of resolution; reacquisition rights; notice.

(a) Except for real property disposed of pursuant to § 5-905(c), the Mayor is authorized and empowered, in his discretion, for the best interests of the District of Columbia ("District"), and with the approval of the Council by resolution, to sell, convey, lease (inclusive of options) for a period of greater than 20 years, exchange, or otherwise dispose of real property, in whole or in part, now or hereafter owned in fee simple by the District, whether purchased with appropriated, grant, or other funds, the proceeds of general obligation bonds or tax revenue anticipation notes issued by the District government, or United States Treasury Notes, or obtained by any other means including exchange, condemnation, eminent domain, gift, dedication, donation, devise, or assignment, for municipal, community development, or other public purpose, which the Council finds to be no longer required for public purposes.

(b) The Mayor, in order to carry out the provisions of this chapter, shall transmit to the Council a proposed resolution that contains a description of the real property to be disposed of and the proposed method of disposition, which shall be one of the following:

- (1) Public or private sale to the highest bidder;
- (2) Negotiated sale to a for-profit or non-profit entity for specifically designated purposes;
- (3) A lease for a period of greater than 20 years;
- (4) A combination sale/leaseback for specifically designated purposes;
- (5) An exchange of interests in real property; or
- (6) Any other means the Mayor finds to be in the best interests of the District.

(c) The proposed resolution to provide for the disposition of real property pursuant to subsection (b) of this section shall be submitted to the Council for a 90-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove of the proposed disposition of the property, in whole or in part, by resolution within the 90-day period, the proposed resolution shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1.

(d) Approval of the disposition of the real property by the Council shall expire 2 years after the effective date of the resolution of approval. If the Mayor

determines prior to the end of the 2-year period that the property cannot be disposed of within the 2-year period, the Mayor may submit to the Council, no later than 60 days prior to the end of the 2-year period, a resolution seeking additional time for the disposition of the property, and shall include with the resolution a detailed status report on efforts made toward disposition of the property as well as the reasons for the inability to dispose of the property within the 2-year period. If the Council does not take action to approve or disapprove the resolution within 30 days of receipt of the resolution, not including Saturdays, Sundays, legal holidays, or days of Council recess, the resolution shall be deemed approved.

(e) The Mayor shall incorporate into the terms of the disposition of real property disposed of through a negotiated sale pursuant to subsection (b)(2) of this section, the right of the District to reacquire the property at the price originally conveyed plus any amounts secured by the property that have been approved by the Mayor, if the property is no longer used for the authorized purpose. For property located within the corporate boundaries of the District, if the District does not exercise its reacquisition option, the owner in fee simple shall be entitled to use the property or sell, convey, or otherwise dispose of the property for use in a manner that is consistent with the designation of the real property on:

(1) The Generalized Land Use Maps adopted pursuant to § 1-246; and

(2) The Official Zoning Map of the District of Columbia adopted pursuant to § 5-413.

(f) The Mayor shall take any steps necessary to ensure continuous community input in the disposition of any real property to be disposed of in accordance with this section, which shall include, for property located within the corporate boundaries of the District, providing notice to any affected Advisory Neighborhood Commission of the final terms and conditions for the sale of the property, for review and comment in accordance with § 1-261, prior to the disposition of the property.

(g) For real property under the jurisdiction of the Board of Education ("Board") that the Board has determined to be no longer needed for educational purposes and for which jurisdiction has been transferred by the Board to the Mayor for disposal in accordance with the provisions of this chapter, the Mayor shall submit to the Council a report on whether the Mayor intends for the property to be used by another agency of the District government. The report shall be submitted to the Council by the Mayor within 90 days of the transfer of the property to the Mayor by the Board. If the report is not submitted to the Council within the 90-day period, the Mayor shall dispose of the property in accordance with the provisions of this chapter and shall transmit to the Council the resolution required by subsection (b) of this section within 180 days of the date of the transfer of the property to the Mayor by the Board.

(h) Notwithstanding any other provision of law, or any rule of law, the Board is authorized to sell and convey the property located at 13th and K Streets, N.W., Lot 808, Square 285, commonly referred to as the Franklin School ("Franklin") to the H Street Community Development Corporation ("H Street"), and to enter into and execute all agreements necessary to consum-

mate this sale, provided that the Board and H Street have entered into a contract specifying that H Street shall resell and reconvey Franklin to the District of Columbia, for the use of the Board, for an amount equal to the price for which H Street purchased Franklin, once renovations have been completed and all of the Board's outstanding debts to H Street related to the renovation of Franklin have been discharged. The Board is further authorized and directed to enter into and execute all agreements necessary to consummate the repurchase of Franklin within 90 days of the completion of the renovations and the discharge of the Board's debts for said renovation.

(i) The Board is authorized to expend an amount not to exceed \$4 million for the renovation of Rabaut and 2 other schools for District of Columbia Public Schools administrative offices, excluding Franklin; provided, however, that if these renovation costs are likely to exceed \$4 million, the Board must come back to the Council for approval of additional expenditures of appropriated operating funds for these purposes.

(j) All District fees and taxes associated with the Board's sale and repurchase of Franklin, and H Street's ownership and renovation of Franklin, shall be waived.

(k) The contractor hired by the Board shall provide an opportunity for students from the District of Columbia Public Schools to participate in vocational training programs with employment opportunities with this renovation project.

(l) The Board shall not expend any appropriated funds to pay for restoration costs but shall use funds to renovate the building to meet minimum occupancy requirements. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 1; 1973 Ed., § 9-301; Mar. 15, 1990, D.C. Law 8-96, § 3, 37 DCR 795; Sept. 11, 1990, D.C. Law 8-158, § 2(a), 37 DCR 4167; Mar. 14, 1995, D.C. Law 10-196, § 2, 41 DCR 7168; Mar. 16, 1995, D.C. Law 10-216, § 2 41 DCR 8038.)

Cross references. — As to duties and responsibilities of Advisory Neighborhood Commissions, see § 1-261.

As to rent, sale, or exchange of lands acquired under District of Columbia Alley Dwelling Act, see §§ 5-101 to 5-115.

As to sale of lands not needed for public purposes, see §§ 16-1332 to 16-1334.

As to disposal of Industrial Home School, see § 32-703.

As to reimbursement of funds advanced upon disposal of real estate of charitable or reformatory institutions, see § 32-1203.

As to exemption from operation of law requiring license to deal in real estate, see § 45-1402.

As to duty of Director of National Park Service to report sales of public lands so that said lands may be entered for taxation, see § 47-409.

Section references. — This section is referred to in §§ 5-905, 9-402, and 9-501.

Effect of amendments. — D.C. Law 10-216 added (h), (i), (j), (k), and (l).

Temporary amendment of section. —

Section 2 of D.C. Law 10-196 added (h), (i) and (j).

Section 3(b) of D.C. Law 10-196 provided that the act shall expire on the 225th day of its having taken effect, or upon the effective date of the District of Columbia Board of Education Sale, Renovation, Lease-back, and Repurchase of Franklin School Amendment Act of 1994, whichever occurs first.

Emergency act amendments. — For temporary designation of the building and all property in Square 255, located at 1350 Pennsylvania Avenue, N.W., popularly referred to as the District Building, under the exclusive authority of the Council of the District of Columbia to determine the use, management, maintenance, operation, repair, renovation, security, lease, sale, or other disposition of the building and property, see § 701 of the Omnibus Spending Reduction Emergency Act of 1993 (D.C. Act 10-102, August 9, 1993, 40 DCR 6144) and § 601 of the Omnibus Spending Reduction Congressional Review Emergency Act of 1993 (D.C. Act 10-145, November 4, 1993, 40 DCR 8081).

For temporary amendment of section, see § 2 of the District of Columbia Board of Education Sale, Renovation, Lease-back, and Repurchase of Franklin School Emergency Amendment Act of 1994 (D.C. Act 10-321, August 4, 1994, 41 DCR 5371) and § 2 of the District of Columbia Board of Education Sale, Renovation, Lease-back, and Repurchase of Franklin School Congressional Adjournment Emergency Amendment Act of 1994 (D.C. Act 10-362, December 15, 1994, 41 DCR 8057).

Legislative history of Law 8-96. — See note to § 9-401.1.

Legislative history of Law 8-158. — Law 8-158, the “Board of Education Real Property Disposal Act of 1990,” was introduced in Council and assigned Bill No. 8-383, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 15, 1990, and May 29, 1990, respectively. Signed by the Mayor on June 18, 1990, it was assigned Act No. 8-220 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-196. — Law 10-196, the “District of Columbia Board of Education Sale, Renovation, Lease-back, and Repurchase of Franklin School Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-736. The Bill was adopted on first and second readings on July 19, 1994, and October 4, 1994, respectively. Signed by the Mayor on October 21, 1994, it was assigned Act No. 10-333 and transmitted to both Houses of Congress for its review. D.C. Law 10-196 became effective on March 14, 1995.

Legislative history of Law 10-216. — Law 10-216, the “District of Columbia Board of Education Sale, Renovation, Lease-back, and Repurchase of Franklin School Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-718, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-353 and transmitted to both Houses of Congress for its review. D.C. Law 10-216 became effective on March 16, 1995.

References in text. — A description of the Generalized Land Use Maps adopted pursuant to § 1-246, referred to in (e)(1), is located at 10 DCMR § 1135 (March 1989).

Application of Law 8-96. — Section 8 of D.C. Law 8-96 provided that:

“(a)(1) The provisions of the Disposal of District Owned Surplus Real Property Amendment Act of 1989 shall apply to any property for which a land disposition agreement was not concluded prior to November 1, 1989.

“(2) The provisions of the Disposal of Dis-

trict Owned Surplus Real Property Amendment Act of 1989 regarding Council approval of the disposition of property shall not apply to the following properties:

“(A) The Dunlop Building Incubator, located at 2321 4th Street, N.E., Lot 808 in Square 3629;

“(B) The fringe parking lot, located at Michigan Avenue and Irving Streets, N.E., Lot 31 in Parcel 121;

“(C) The Crummel School, located at 1900 Gallaudet Street, N.E., Lot 22 in Parcel 142;

“(D) The Capital City Business and Industrial Park, located at W Street between Brentwood Road and Montana Ave., N.E., Lot 808 in Square 3863 and Lot 119 in Parcel 142;

“(E) Lot 47 in Parcel 243, located at the Southeast Corner, Martin Luther King Blvd. and Savannah St., S.E.;

“(F) The Capital City Market Annex Expansion site, located at 1248 4th Street, N.E., Lot 802 in Square 3587;

“(G) The Anacostia Gateway, located at 1201 Good Hope Road, S.E., Lot 1017 in Square 5769;

“(H) 61-69 P Street, N.W., a redevelopment housing project, located at 61 through 69 P Street, N.W., Lots 166, 167, 168, 169, and 803 in Square 615;

“(I) Old Police Precinct No. 9, located at 525 9th Street, N.W., Lot 808 in Square 936;

“(J) Deanwood Gardens, located at 4808-4810 Nannie Helen Burroughs Avenue, N.E., Lot 13 in Square 5148;

“(K) 1607 U Street, S.E., the Single-Home Development Project, located at 1607 U Street, S.E., Lot 816 in Square 5777;

“(L) Perry School, the Northwest No. 1 Urban Renewal Area located at 1st, Pierce, and M Streets, N.W., Lot 849 in Square 557;

“(M) The Washington Treatment Center, Inc., located at Benning Road and Hanna Place, S.E., Lots 307 and 827 in Square 5359;

“(N) Knox Village, located at the Alabama Avenue Development Zone at Knox and Irving Streets, S.E., Lot 800 in Square 5727W; and

“(O) The Golden Rule Terrace Apartments, located adjacent to the Center Leg Freeway at New York and New Jersey Avenues, N.W., as follows:

“(i) The portion of Lot 835 in Square 525 bounded by New York Avenue, N.W., Square 556, L Street, N.W., and the Center Leg Freeway and the portion of Lot 835 in Square 525 bounded by the Center Leg Freeway, L Street, N.W., and 4th Street, N.W.;

“(ii) The portion of Lot 838 in Square 558 bounded by L Street, N.W., New Jersey Avenue, N.W., K Street, N.W., and the Center Leg Freeway; and

“(iii) Lot 1 and the portions of Lots

828 and 831 in Square 526 bounded by L Street, N.W., the Center Leg Freeway, K Street, N.W., and the western lots in Square 526.

"(b) The District shall conclude a disposition of the properties referred to in subsection (a) of this section within 2 years of the effective date of the Disposal of District Owned Surplus Real Property Amendment Act of 1989."

Sale, lease or transfer of certain United States property in District to foreign governments and international organization.

— See Act of October 8, 1968, Pub. L. 90-553, as amended by Act of May 25, 1982, Pub. L. 97-186, as amended by § 124 of the Act of August 16, 1985, Pub. L. 99-93, as amended by § 120 of the Act of February 16, 1990, Pub. L. 101-246.

Conveyance of property. — Pursuant to authority of this section, the Act of March 16, 1978, D.C. Law 2-63, conveying square 491 to the Pennsylvania Avenue Development Corporation, was adopted.

D.C. Law 7-94, effective March 16, 1988, authorized the Mayor to convey property located at 525-9th Street, N.E., Lots 32, 33, and 34 of Square 936, commonly referred to as Old Police Precinct #9.

D.C. Law 8-32, effective September 22, 1989, as amended by D.C. Act 8-97, effective October 17, 1989, as amended by D.C. Law 8-171, effective September 26, 1990, authorized the Mayor to convey property located at 1529 16th Street, N.W., Lot 818 of Square 194, commonly referred to as the Jewish Community Center.

D.C. Law 8-82, effective March 15, 1990, authorized the Mayor to convey property located at Lot 13 in Square 4446.

D.C. Law 10-96 authorized the Mayor to convey certain real property of the District of Columbia known as Engine Company No. 24, located on Lot 816, Square 2900, with a street address at 3702 Georgia Avenue N.W., to the Washington Metropolitan Area Transit Authority for the purpose of constructing the Georgia Avenue/Petworth Station facilities.

D.C. Law 10-139, effective July 23, 1994, authorized the Mayor to convey property located at 2025 2nd Street, N.W., commonly referred to as the Gage School.

Disposal of surplus real property. — Section 2 of D.C. Law 8-96 provided that for the purposes of this act, the term "real property" means land titled in the name of the District of Columbia ("District") or in which the District has a controlling interest and includes all structures of a permanent character erected thereon or affixed thereto, any natural resources located thereon or thereunder, all riparian rights attached thereto, or any air space located above or below the property or any street or alley under the jurisdiction of the Mayor.

Authority over the John A. Wilson Building. — Section 601 of D.C. Law 10-65, pro-

vided, inter alia, that notwithstanding the provisions of this chapter, the John A. Wilson Building is designated under the exclusive authority of the Council of the District of Columbia to determine the use, management, maintenance, operation, repair, renovation, security, lease, sale, or other disposition of the property pursuant to § 9-701.

Approval of Prevocational School Site.

— Pursuant to Resolution 8-291, the "Prevocational School Site Lease Approval Resolution of 1990", effective November 30, 1990, the Council approved the request by the Mayor to lease the Prevocational School Site for a period not to exceed 99 years.

Disapproval of request to lease Employment Services Building. — Pursuant to Resolution 8-292, the "Employment Services Building Lease Disapproval Resolution of 1990", effective November 30, 1990, the Council disapproved the request by the Mayor to lease the Employment Services Building Site for a period not to exceed 99 years.

Precinct Station Site Lease Approval Resolution of 1991. — Pursuant to Resolution 9-146, effective December 13, 1991, the Council approved the request by the Mayor to lease the Old Number 8 Precinct Station (Lot 804; Square 1730) to Iona Senior Services for a period of greater than 20 years.

Proposal to Develop 10 Lots Located at Benning Road, S.E., Lots 309 through 318, Square 5359 Resolution of 1992. — Pursuant to Resolution 9-264, effective June 12, 1992, the Council reviewed and approved an unsolicited proposal to develop 10 lots located at Benning Road between Hanna Place and H Street, S.E., Lots 309 through 319, Square 5359.

Lease of the Employment Services Building Site Disapproval Resolution of 1993. — Pursuant to Resolution 10-62, effective June 11, 1993, the Council disapproved the lease of the Employment Services Building site for a period of up to 99 years.

Children's Island Disposition Resolution of 1993. — Pursuant to Resolution 10-92, effective July 30, 1993, the Council authorized conditionally the disposition of property in the Anacostia River known as Children's Island, upon the approval by the Council of the District of Columbia of a transfer of jurisdiction over the property from the National Park Service to the District of Columbia, pursuant to a Lease and Restated Cooperative Agreement between the District of Columbia and National Children's Island, Inc. and Island Development Corporation, and subject to compliance with the provisions of the Children's Island Development Plan Emergency Act of 1993 and successor permanent legislation.

Unsolicited Proposal Submitted by Washington Properties, Inc./Square 673

Partners for the Negotiated Disposition of 59 M Street, N.E., Resolution of 1994. — Pursuant to Resolution 10-475, effective December 6, 1994, the Council reviewed and provided comments on an Unsolicited Proposal submitted by Washington Properties, Inc./ Square 673 Partners for the negotiated disposition of 59 M Street, N.E.

Delegation of authority pursuant to D.C. Law 7-94 “Conveyance of Real Property Act of 1984”. — See Mayor’s Order 88-123, May 16, 1988.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

Cited in *Georgetown Entertainment Corp. v. District of Columbia*, App. D.C., 496 A.2d 587 (1985).

§ 9-401.1. “Real property” defined.

For the purposes of this chapter, the term “real property” means land titled in the name of the District of Columbia (“District”) or in which the District has a controlling interest and includes all structures of a permanent character erected thereon or affixed thereto, any natural resources located thereon or thereunder, all riparian rights attached thereto, or any air space located above or below the property or any street or alley under the jurisdiction of the Mayor. (Mar. 15, 1990, D.C. Law 8-96, § 2, 37 DCR 795.)

Legislative history of Law 8-96. — Law 8-96, the “Disposal of District Owned Surplus Real Property Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-302, which was referred to the Committee on Government Operations. The Bill was adopted

on first and second readings on November 21, 1989, and December 19, 1989, respectively. Approved without the signature of the Mayor on January 18, 1990, it was assigned Act No. 8-148 and transmitted to both Houses of Congress for its review.

§ 9-402. Expenses of sale; deposit of net proceeds.

(a) The Mayor is further authorized to pay the reasonable and necessary expenses of sale of each parcel of land sold and, with the exception of the property mentioned in subsection (b) of this section, shall deposit the net proceeds of the sale in the District Treasury.

(b)(1) There is established within the District Treasury a fund to be known as the Board of Education Real Property Improvement and Maintenance Fund (“Fund”). The Board shall administer the Fund and receive all payments into the Fund that are required by this chapter. The Fund shall be maintained as an enterprise fund as defined in § 47-373(2)(D), and shall be used exclusively for the maintenance, improvement, rehabilitation, and repair of buildings and grounds under the jurisdiction of the Board that are used for educational purposes for public school students in the District; provided that the Board

shall obtain the approval of the Mayor and the consent of the Council by resolution, prior to improving an entire school building, or any portion of a school building, if the purpose of the improvement is to lease the building subsequent to improvement, in order to generate revenues for the Fund.

(2) The Mayor shall deposit into the Fund established by paragraph (1) of this subsection, the net proceeds and any interest that accrues from the disposition of any real property formerly under the jurisdiction of the Board that the Board has determined to be no longer needed for educational purposes and for which jurisdiction was transferred by the Board to the Mayor and disposed of in accordance with § 9-401 and § 5-905(c).

(3) Prior to deposit by the Mayor into the Fund of the net proceeds from the disposition of property referred to in paragraph (2) of this subsection, the Mayor shall deduct the amount of the principal balance outstanding from the proceeds of any general obligation bonds issued by the District pursuant to § 47-321, if the proceeds were used either to construct, rehabilitate, or renovate the property disposed of.

(4) The Mayor shall submit to the Council by November 30th of each year a report on the status of all real property transferred by the Board to the Mayor during any previous fiscal year.

(5) The Board shall submit to the Council with its annual appropriations request a report detailing the actual expenditure of funds from the Fund, by facility, location, and project, during the previous fiscal year and the proposed expenditure of funds from the Fund, by facility, location, and project, during the next fiscal year. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 2; 1973 Ed., § 9-302; Sept. 11, 1990, D.C. Law 8-158, § 2(b), 37 DCR 4167.)

Temporary amendment of section. — Section 2 of D.C. Law 10-161 added a new subsection (c) to read as follows:

“(c) Notwithstanding any other provision of law, or any rule of law, the Mayor is authorized to sell property located at 2545 Georgia Avenue, N.W., Lot 830, Square 3060, commonly referred to as the Miner Building, to Howard University. The Mayor is further authorized to pay the reasonable and necessary expenses of the sale of the Miner Building and shall deposit the net proceeds of the sale into the University of the District of Columbia Real Property Acquisition and Improvement Fund pursuant to paragraph (1) of this subsection.

“(1) There is established within the District Treasury a fund to be known as the University of the District of Columbia Real Property Acquisition and Improvement Fund (“UDC Fund”). The Board of Trustees of the University of the District of Columbia shall administer the Fund and receive all payments into the UDC Fund that are required by this subsection. The UDC Fund shall be maintained as an enterprise fund as defined in § 47-373(2)(D), and shall be used exclusively to either acquire or pay for the operations of the property located at 4250 Connecticut Avenue, N.W., to renovate or

refurbish a satellite campus at the former Carter G. Woodson Junior High School facility, to complete Phase II construction, or to begin Phase III construction of the University of the District of Columbia’s Van Ness Campus.

“(2) The Board shall submit to the Council with its annual appropriations request a report detailing the actual expenditure of funds from the UDC Fund, by facility, location and project, during the previous fiscal year and the proposed expenditure of funds from the UDC Fund, by facility, location, and project, during the next fiscal year.

“(3) The Mayor shall conclude the sale of the Miner Building on June 20, 1994, or before the expiration of the “Miner Building Conveyance Temporary Amendment Act of 1994,” whichever occurs later.”

Section 3(b) of D.C. Law 10-161 provides that this act shall expire on the 225th day of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Miner Building Conveyance Emergency Amendment Act of 1994 (D.C. Act 10-256, June 23, 1994, 41 DCR 4472).

Legislative history of Law 8-158. — See note to § 9-401.

Legislative history of Law 10-161. — Law 10-161, the “Miner Building Conveyance Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-680. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-282 and transmitted to both Houses of Congress for its review. D.C. Law 10-161 became effective on August 25, 1994.

Grant of easements on real property to the Washington Metropolitan Area Transit Authority. — D.C. Law 7-89, effective March 11, 1988, authorized the Mayor to grant certain easements on certain real property of the District of Columbia to the Washington Metropolitan Area Transit Authority for metroraíl purposes in the District of Columbia.

§ 9-403. Execution of deeds.

The Mayor of the District of Columbia is hereby authorized to execute proper deeds of the conveyance for real estate sold under the provisions of this chapter, which shall contain a full description of the land sold, either by metes and bounds, or otherwise, according to law. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 3; 1973 Ed., § 9-303.)

Cross references. — As to execution of instruments by Mayor, see § 1-303.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-404. Secretary of the Interior to sell certain real estate — Authorization.

The Secretary of the Interior, with the approval of the National Capital Planning Commission, is hereby authorized, in his discretion, for the best interests of the United States, to sell and convey, in whole or in part, by proper deed or instrument, any real estate held by the United States in the District of Columbia and under the jurisdiction of the National Park Service, which may be no longer needed for public purposes, for cash, or on such deferred-payment plan as the Secretary of the Interior may approve, at a price not less than that paid for it by the government and not less than its present appraised value as determined by him. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 4; 1973 Ed., § 9-304.)

Transfer of functions. — The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

All functions of all officers of the Department

of the Interior and all functions of all agencies and employees of such Department were transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1262.

§ 9-405. Same — Solicitation for bids.

In selling any parcel of land under this chapter, said Secretary shall cause such public or private solicitation for bids or offers to be made as he may deem appropriate, and shall sell the parcel to the party agreeing to pay the highest price therefor if such price is otherwise satisfactory: Provided, that in the event the price offered or bid by the owner of any lands abutting the lands to be sold equals the highest price offered or bid by any other party, the parcel may be sold to such abutting owner. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 5; 1973 Ed., § 9-305.)

§ 9-406. Same — Expenses of sales.

Said Secretary is further authorized to pay the reasonable and necessary expenses of sale of each parcel of land sold, and shall deposit the net proceeds thereof in the Treasury to the credit of the United States and the District of Columbia in the proportion that each paid the appropriations from which the parcels of land were acquired or were obligated to pay the same, at the time of acquisition, by reimbursement. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 6; 1973 Ed., § 9-306.)

§ 9-407. Inventory of real property owned by District.

The Mayor shall establish a centralized automated database that contains an inventory of all real property owned by the District. Information contained in the database for each property shall include, but not be limited to, the following:

- (1) The street address of the property;
- (2) The property's square and lot number;
- (3) The current or last use of the property;
- (4) The method by which the property was acquired;
- (5) The underlying zoning for the property;
- (6) For property located within the corporate boundaries of the District, the designation of the property on the Generalized Land Use Maps, adopted pursuant to § 1-246;
- (7) The area of the property in square feet and, if improved, the gross floor area, including the subsurface area, and the number of stories of any building on the property;
- (8) The current assessed value of the property and any improvements;
- (9) The Advisory Neighborhood Commission within which the property is located; and
- (10) Whether the real property is located within a historic district or is designated as a registered historic landmark under District or federal laws and, if so, the designation. (Mar. 15, 1990, D.C. Law 8-96, § 4, 37 DCR 795.)

Legislative history of Law 8-96. — See note to § 9-401.1.

CHAPTER 5. EXCHANGE OF DISTRICT-OWNED LAND.

Sec.

9-501. Council empowered to effect exchange.

9-502. Publication of intended exchange.

9-503. Mayor authorized to execute and accept deed.

Sec.

9-504. Mayor authorized to pay or receive amounts as part of consideration for exchange.

§ 9-501. Council empowered to effect exchange.

Where 2 lots or parcels of land abut each other and 1 of such lots or parcels belongs to the District of Columbia, the Council of the District of Columbia, in accordance with § 9-401, is hereby authorized and empowered, when in its judgment and discretion it is for the best interest of the District of Columbia, to exchange such District-owned land, or part thereof, for the abutting lot or parcel of land, or part thereof. (Aug. 1, 1951, 65 Stat. 150, ch. 283; 1973 Ed., § 9-401; Mar. 15, 1990, D.C. Law 8-96, § 7, 37 DCR 795.)

Legislative history of Law 8-96. — Law 8-96, the “Disposal of District Owned Surplus Real Property Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-302, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 21, 1989, and December 19, 1989, respectively. Approved without the signature of the Mayor on January 18, 1990, it was assigned Act No. 8-148 and transmitted to both Houses of Congress for its review.

Disposal of surplus real property. — Section 2 of D.C. Law 8-96 provided that for the purposes of this act, the term “real property” means land titled in the name of the District of Columbia (“District”) or in which the District has a controlling interest and includes all structures of a permanent character erected thereon or affixed thereto, any natural resources located thereon or thereunder, all riparian rights attached thereto, or any air space located above or below the property or any street or alley under the jurisdiction of the Mayor.

Mayor to establish centralized automated database containing inventory of real property owned by District. — Section 4 of D.C. Law 8-96 provided that the Mayor shall establish a centralized automated database containing an inventory of all real property owned by the District, with the information to include certain data as specified in § 9-407.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (193) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

§ 9-502. Publication of intended exchange.

No such exchange shall be made unless the Council of the District of Columbia shall, 30 days prior thereto, publish in a newspaper of general circulation in the said District a notice of its intention to make such exchange and such notice shall include a description by lot or parcel number or otherwise

of all lots or parcels to be exchanged and the appraised value thereof. (Aug. 1, 1951, 65 Stat. 150, ch. 283; 1973 Ed., § 9-402.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (193) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-503. Mayor authorized to execute and accept deed.

The Mayor of the District of Columbia is hereby authorized to execute a proper deed of conveyance for the land belonging to the District to be conveyed and to accept a proper deed of conveyance from the owner of such abutting real estate. (Aug. 1, 1951, 65 Stat. 150, ch. 283; 1973 Ed., § 9-403.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 9-504. Mayor authorized to pay or receive amounts as part of consideration for exchange.

If, in the opinion of the Mayor of the District of Columbia, the value of the land to be conveyed to the District is in excess of the value of the land to be conveyed by the District, the Mayor is authorized to pay, within the limitation of appropriations therefor, to the abutting property owner the amount of such excess as determined by the Mayor, on the basis of an appraisal, and, if the value of the land to be conveyed by the District is in excess of the value of the land to be conveyed to the District, the Mayor shall require the abutting property owner to pay such excess as determined by the Mayor, on the basis of an appraisal, as part of the consideration for the said exchange. (Aug. 1, 1951, 65 Stat. 150, ch. 283; 1973 Ed., § 9-404.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 6. WASHINGTON CONVENTION CENTER.

Sec.

9-601. [Repealed].

9-602. Convention Center Board of Directors — Established; composition; qualifications; designation of Chairman; term of office; residency requirement; vacancies; indictment

Sec.

for felony; removal; compensation; quorum; meetings.

9-603. Same — Duties and responsibilities; authorizations, promulgation of rules and regulations.

9-604 to 9-610. [Repealed].

§ 9-601. Findings.

Repealed. Sept. 28, 1994, D.C. Law 10-188, § 401, 41 DCR 5333.

Cross references. — As to Washington Convention Center Authority, see §§ 9-801 to 9-819.

Legislative history of Law 10-188. — Law 10-188, the “Washington Convention Center Authority Act of 1994,” was introduced in Council and assigned Bill No. 10-527, which was referred to the Committee on Economic Development and Sequential to the Committee of the Whole. The Bill was adopted on first and second readings on July 5, 1994, and July 19, 1994, respectively. Signed by the Mayor on August 2,

1994, it was assigned Act No. 10-314 and transmitted to both Houses of Congress for its review. D.C. Law 10-188 became effective on September 28, 1994.

Repeal of Washington Convention Center Management Act. — Section 401 of D.C. Law 10-188 provided that all sections of the Washington Convention Center Management Act of 1979, effective November 3, 1979, except for §§ 3 and 4, which are codified as §§ 9-602 and 9-603, are repealed.

§ 9-602. Convention Center Board of Directors — Established; composition; qualifications; designation of Chairman; term of office; residency requirement; vacancies; indictment for felony; removal; compensation; quorum; meetings.

(a) There is hereby established as an independent agency of the District of Columbia government, the Convention Center Board of Directors (the “Board”).

(b) The Board shall consist of 5 members appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia. At least 4 of the 5 members appointed by the Mayor shall be persons with proven expertise in business and financial management. The General Manager shall serve as an ex-officio member of the Board.

(c) The Mayor shall, from time to time, designate the Chairman of the Board. The members of the Board shall serve for a term of 3 years, beginning on the date the member is confirmed, except that with respect to the members first appointed under this section, the Chairman shall serve for a term of 3 years, 2 members shall serve for a term of 2 years, and 2 members shall serve for a term of 1 year, as determined by the Mayor. If a member is not renominated to the Board, the member shall serve until a successor has been nominated and confirmed. Any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired term of the member whose vacancy is being filled. A member filling a vacancy may be reappointed, and if not reappointed, shall serve until a successor has been nominated and confirmed.

Within 30 days after a term expires or a vacancy occurs on the Board, the Mayor shall appoint a nominee for the vacant or expired membership on the Board. The Council may approve or disapprove the nomination by resolution within 45 days of the date the nomination is transmitted to the Council, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not act within the 45-day period, the nomination shall be deemed disapproved.

(d) Each member of the Board shall be a resident of the District of Columbia or establish residency not later than 6 months after appointment to the Board. The Mayor shall remove any member for failure to establish or maintain residency.

(e) Should a member of the Board be indicted for the commission of a felony, such member shall be automatically suspended from serving on the Board. Upon a final determination of guilt or innocence, the term of such member shall respectively be automatically terminated or reinstated. The Mayor may remove a member of the Board for each of the following reasons:

(1) Violation of subchapter VI of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (D.C. Code, § 1-1461 et seq.); and

(2) Repeated failure to attend meetings as provided in such rules as the Board may adopt; and

(3) Repeated failure to carry out official duties.

(f) Members of the Board shall be compensated at the rate of \$125 for each day or part thereof, for time expended in the performance of official duties, not to exceed the sum of \$10,000 for each fiscal year through fiscal year 1983 and not to exceed the sum of \$6,250 for each fiscal year thereafter. A member of the Board who is also an officer or employee of the District of Columbia or the United States shall serve without additional compensation. Members of the Board shall be reimbursed for travel, subsistence, and other expenses incurred in carrying out official duties.

(g) Three members of the Board shall constitute a quorum for the convening of any meeting of the Board and for the transaction of official business.

(h) The Board shall meet no less than once every 60 days and shall be subject to the provisions of § 1-1504. (1973 Ed., § 9-602; Nov. 3, 1979, D.C. Law 3-36, § 3, 26 DCR 1439; Dec. 21, 1985, D.C. Law 6-74, § 3(a), 32 DCR 6475; May 10, 1989, D.C. Law 7-231, § 23, 36 DCR 492; Mar. 6, 1991, D.C. Law 8-199, § 2, 37 DCR 7332.)

Section references. — This section is referred to in § 25-103.

Legislative history of Law 3-36. — See note to § 9-601.

Legislative history of Law 6-74. — Law 6-74, the "Fiscal Year 1986 Follow-Through Act of 1985," was introduced in Council and assigned Bill No. 6-206, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on July 9, 1985 and October 8, 1985, respectively. Approved without the signature of the Mayor on October 29, 1985, it was assigned

Act No. 6-98 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-199. — Law

8-199, the "Washington Convention Center Management Act of 1979 Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-447, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on October 9, 1990, and October 23, 1990, respectively. Signed by the Mayor on November 8, 1990, it was assigned Act No. 8-262 and transmitted to both Houses of Congress for its review.

Editor's notes. — Section 23 of D.C. Law 7-231 purported to delete "or such nominations shall be deemed to be confirmed" following "Council" in the sixth sentence of (c) apparently without regard to the amendment of the section by D.C. Law 6-74.

Cited in Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics, App. D.C., 441 A.2d 889 (1981).

§ 9-603. Same — Duties and responsibilities; authorizations, promulgation of rules and regulations.

(a) The Board shall have the following duties and responsibilities:

(1) Adopt and publish internal operating rules for the conduct of Board meetings;

(2) Develop policies for the management, maintenance and operation of the convention center including but not limited to concessions, vehicle parking facilities or other related facilities;

(3) Adopt rules and regulations governing the operation and use of the convention center;

(4) Develop and establish a personnel system, rules and regulations setting forth minimum standards for all employees including but not limited to pay, contract terms, vacations, leave, retirement, residence, health and life insurance, employee disability and death benefits, not later than 3 years after the effective date of this chapter. The Board shall adopt interim personnel rules and regulations until such time as a personnel system is established as provided for herein: Provided, that any person who applies for a position with the Board and who accepts appointment or is hired to fill a position with the Board shall become a bona fide resident of the District of Columbia within 180 days of the effective date of such appointment, and shall maintain such residence for the duration of the employment: Provided, further, that the failure to become a District resident or to maintain District residency shall result in the forfeiture of the position to which the said person has been appointed;

(5) Select, employ and fix the compensation for a General Manager of the convention center and such staff of the Board, as it deems necessary. All staff shall serve at the pleasure of the Board. The appointment or termination of the General Manager shall require the concurrence of a majority of the Board;

(6)(A) Prepare and submit a budget to the Mayor for inclusion in the annual budget presentation; such annual budget presentation shall include a request for such funds as may be required to plan, promote and prepare for the operation of the convention center, anticipated income, expenses and capital outlays (including a capital improvement plan), all Board expenses and a listing of all agreements and contracts entered into by the Board in excess of \$25,000;

(B) The budget submitted by the Board shall also include estimates of the funds needed to cover operating losses and the recommended sources of such funds. Upon determination of actual operating losses or profits, excluding

depreciation on fixed assets acquired with funds other than funds earned in the operation of the convention center, appropriate adjustments shall be made in the budget estimates for the following fiscal year to reflect the actual loss or profit determined;

(C) The budget shall be submitted to the Mayor on the date that other District of Columbia departments and agencies are required to submit their budgets to the Mayor;

(D) The Council of the District of Columbia shall approve and establish the budget, except as to personnel in which case the Council shall establish the maximum amount of funds which will be allocated for personnel, in the same manner and detail as approved and established for departments and agencies under the administrative control of the Mayor as provided in § 1-227(f);

(7) Require lessees or permitted occupants to carry public liability insurance or other indemnification protecting the interests of such lessees or occupants, the Board, the members and employees thereof and the District of Columbia;

(8) Issue regulations and establish policies for contracting and procurement; such regulations shall also provide for the participation of minorities and locally based businesses in accordance with the Minority Contracting Act of 1976 (D.C. Code, § 1-1141 et seq.);

(9) Establish an accounting and financial reporting system compatible with the Financial Management System of the District of Columbia;

(10) Advise the Mayor and the Council of the District of Columbia of all property acquired or disposed of by the Board; and

(11) Issue regulations governing the property management function.

(b) To carry out the purposes of this chapter, the Board is authorized to:

(1) Enter into contracts with the District of Columbia, the United States, other public entities and with private entities to achieve its purposes, except that, after December 21, 1985, contracts exceeding 1 year for food service shall not be made by the Board before the Council of the District of Columbia approves the contract, by resolution, and does so during a legislative review period which shall last 30 days, which shall not include Saturdays, Sundays, legal holidays, and days that pass during a recess of the Council of the District of Columbia. Nothing in this paragraph shall authorize the Board to obligate funds in excess of \$200,000 in any 1 fiscal year, excluding personnel expenses and capital improvement projects, or be construed to alter the responsibilities of the Department of General Services with respect to construction, completion and acceptance of the convention center;

(2) Lease or permit the occupancy of any part of the convention center including any or all structures, equipment or facilities;

(3) Furnish such services as deemed appropriate to lessees and permitted occupants;

(4) Carry public liability insurance or other indemnification protecting the interests of the District of Columbia, the Board, the members and employees thereof, the sufficiency of which may be subject to the approval of the Mayor;

(5) Accept gifts of goods and services: Provided, that receipt of such gifts is reported to the Council of the District of Columbia; and

(6) Delegate to the General Manager by a majority vote of the Board any authority under this subsection.

(c) All rules and regulations of the Board shall be issued under the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.). After such rules and regulations have been so issued, they shall be transmitted to the Mayor and the Chairman of the Council and shall take effect at the end of the 30-day period during which the Council of the District of Columbia is in continuous session beginning on the day that the rules and regulations are transmitted to the Chairman unless the Council, during such 30-day period, adopts a resolution disapproving, in whole or in part, such rules and regulations. Following such 30-day period of time, the Board shall publish the rules and regulations not disapproved by the Council in the District of Columbia Register. (1973 Ed., § 9-603; Nov. 3, 1979, D.C. Law 3-36, § 4, 26 DCR 1439; Dec. 21, 1985, D.C. Law 6-74, § 3(b), 32 DCR 6475; Nov. 5, 1990, 104 Stat. 2237, Pub. L. 101-518, § 136.)

Legislative history of Law 3-36. — See note to § 9-601.

Legislative history of Law 6-74. — See note to § 9-602.

Council's desire not to approve proposed food service contract. — Pursuant to Resolution 7-148, the "Washington Convention Center Food Service Contract Resolution of 1987," effective November 10, 1987, the Council expressed its desire not to approve a proposed food service contract entered into between the Convention Center Board of Directors and Service America Concessions Corporation/National Business Services Enterprises, Inc., dated September 23, 1986, and submitted to Council by

the Convention Center Board of Directors on October 6, 1987, and the Council recommended that the food service contract be rebid.

Transfer of functions. — The functions of the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

Cited in Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics, App. D.C., 441 A.2d 889 (1981).

§§ 9-604 to 9-610. Duties and responsibilities of General Manager; Washington Convention Center Fund — established; limitation on assets; deposits; expenditures; billings and collections; transfer of excess operating profits; Antideficiency Act applicable; annual audit; report; conflict of interest; annual report; appropriations; merit system inapplicable.

Repealed. Sept. 28, 1994, D.C. Law 10-188, § 401, 41 DCR 5333.

Cross references. — As to Washington Convention Center Authority, see §§ 9-801 to 9-819.

Legislative history of Law 10-188. — See note to § 9-601.

Repeal of Washington Convention Center Management Act. — See note to § 9-601.

CHAPTER 7. JOHN A. WILSON BUILDING DESIGNATION.

Sec.

9-701. John A. Wilson Building designated.

§ 9-701. John A. Wilson Building designated.

(a) Notwithstanding the provisions of Chapter 4 of this title, or any other law, the building and all property located in Square 255, located at 1350 Pennsylvania Avenue, N.W., popularly referred to as the "District Building" ("Property"), is hereby designated under the exclusive authority of the Council to determine the use, management, maintenance, operation, repair, renovation, security, lease, sale, or other disposition of the Property.

(b)(1) The Secretary of the Council shall be responsible for the use, management, maintenance, operation, repair, renovation, security, lease, sale, or other disposition of the Property, in accordance with rules of the Council.

(2) The Secretary of the Council is authorized to:

(A) Enter into intra-District transfer and other agreements with agencies of the District government to provide goods or services for the use, management, maintenance, operation, repair, renovation, security, lease, sale, or other disposition of the Property;

(B) Enter into contracts or other agreements with private entities to provide goods or services for the use, management, maintenance, operation, repair, renovation, security, lease, sale, or other disposition of the Property; and

(C) Enter into lease or other agreements, with or without monetary consideration, with entities of the District government and with private entities for the use of space within the Property.

(3) In the execution of paragraph (2)(A) of this subsection, preference should be given to those entities occupying space within the Property on November 25, 1993, those entities whose location within the Property would result in a cost savings to the District government, and those entities providing goods or services that are beneficial to the local community.

(4) Any rent, fee, or proceeds derived from any lease or other use agreement entered into pursuant to this section shall be paid to the Treasury of the District of Columbia, and accounted for in the General Fund as a separate revenue source allocable to provide authority for the Council to expend funds for the management of these leases or other use agreements, and for the use, management, maintenance, operation, repair, renovation, security, lease, sale, or other disposition of the Property.

(5) The Secretary of the Council shall be the exclusive authority for the issuance of permits for official parking spaces on the following streets adjacent to or near the Property:

(A) The south side of Pennsylvania Avenue, N.W., between 12th and 13th Streets, N.W.;

(B) The north and south sides of Pennsylvania Avenue, N.W., between 13th and 14th Streets, N.W.;

(C) The south side of Pennsylvania Avenue, N.W., between 14th and 15th Streets, N.W.;

(D) Both sides of D Street, N.W., between 13½ and 14th Streets, N.W.;

(E) Both sides of 13½ Street, N.W., between Pennsylvania Avenue, N.W., and D Street, N.W.; and

(F) The east side of 14th Street, N.W., between D Street, N.W., and Pennsylvania Avenue, N.W.

(c) The Council may accept and use private gifts or donations for the purpose of providing goods or services for the use, management, maintenance, operation, repair, renovation, security, lease, sale, or other disposition of the Property as determined by the Secretary of the Council.

(d)(1) In accordance with § 1-227(b), the functions of the Department of Administrative Services, the Department of Public Works, and any other agencies, that are related to the use, management, maintenance, operation, repair, renovation, security, lease, sale, or other disposition of the Property, and any position, property, record, contract, unexpended balance of appropriations, allocation, or other operating or capital funds, that are related to, available for, or to be made available for the use, management, maintenance, repair, renovation, security, lease, sale, or other disposition of the Property, are transferred to the Council.

(2) In the execution of paragraph (1) of this subsection, the Department of Administrative Services, the Department of Public Works, and any other agency shall enter into intra-District transfer or other agreements, as determined by the Secretary of the Council.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, the Department of Administrative Services, the Department of Public Works, or any other agency of the District government which, prior to November 25, 1993, has directly or indirectly provided maintenance, security, or other goods or services to the Property shall continue to provide these goods and services, at an adequate level as determined by the Secretary of the Council, until intra-District transfer or other agreements pertaining to these goods and services are entered into between the agency and the Secretary of the Council. (Nov. 25, 1993, D.C. Law 10-65, § 601, 40 DCR 7351.)

Legislative history of Law 10-65. — D.C. Law 10-65, the “Omnibus Spending Reduction Act of 1993,” was introduced in Council and assigned Bill No. 10-323, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 6, 1993, it was

assigned Act No. 10-120 and transmitted to both Houses of Congress for its review. D.C. Law 10-65 became effective on November 25, 1993.

Designation of District Building for use by the Council of the District of Columbia.

— See Mayor’s Order 93-14, March 5, 1993.

CHAPTER 8. WASHINGTON CONVENTION CENTER AUTHORITY.

Sec.	Sec.
9-801. Findings and declarations.	9-810. Delegation of Council authority to issue bonds.
9-802. Definitions.	9-811. Power of the Authority to issue bonds and notes.
9-803. Establishment of the Washington Convention Center Authority; purpose of the Authority.	9-812. Terms for sale of bonds; additional bond and note provisions.
9-804. General powers of Authority.	9-813. District pledges.
9-805. Limitations on Authority's powers.	9-814. Transfer of excess cash.
9-806. Establishment of Board of Directors.	9-815. District of Columbia repayment option.
9-807. Duties of the Board.	9-816. Location of new convention center.
9-808. General Manager; appointment and duties.	9-817. Merit personnel system inapplicable.
9-809. Washington Convention Center Authority Fund; transfer and pledge of revenues.	9-818. Transition provisions; establishment of Interim Board of Directors.
	9-819. Establishment of Advisory Committee.

§ 9-801. Findings and declarations.

The Council of the District of Columbia hereby finds and declares that:

(1) The largest private sector economic impact in the District in terms of revenue and jobs is the convention and tourism industry.

(2) When the existing convention center opened in 1983 with 381,000 total square feet, it ranked 4th in the nation in exhibition space.

(3) Since 1983, however, nearly every major city has expanded its convention center.

(4) The existing convention center now ranks 30th in the country in exhibition space.

(5) In 1983, the existing convention center could compete for 94% of the country's convention market.

(6) In 1993, given its current size, the existing convention center can compete for only 54% of the country's convention market.

(7) The construction of a new convention center by 1997 would attract increased business from 48 national and international shows per year instead of the 28-show capacity of the existing convention center.

(8) A new convention center would have a significant economic impact, directly and indirectly, on the District.

(9) Direct and indirect job benefits to the District as a result of a new convention center would be considerable.

(10) The creation of a Washington Convention Center Authority will enhance the financial viability of the new convention center.

(11) The new convention center will enhance the opportunities for economic development in the District.

(12) The new convention center should be located within an area bounded by 7th Street, N.W., N Street, N.W., 9th Street, N.W., and Mount Vernon Square, N.W. Additionally, the Mayor may evaluate other alternative sites in which to locate the new convention center. The Mayor should specifically evaluate 2 sites: the site bounded by New York Avenue, N.E., 1st Street, N.E., M Street, N.E., and the rail line to Florida Avenue; and the site located at the Anacostia Metro.

(13) In order to achieve continued maximum utilization of resources and efficiency of operations, both the existing convention center and the new convention center should be operated as public enterprises.

(14) In order to ensure the fiscal soundness of both the existing convention center and the new convention center and to accomplish the desirable social and economic benefits to the District, the granting of the powers conferred by this chapter is necessary and in the public interest. (Sept. 28, 1994, D.C. Law 10-188, § 101, 41 DCR 5333.)

Legislative history of Law 10-188. — Law 10-188, the “Washington Convention Center Authority Act of 1994,” was introduced in Council and assigned Bill No. 10-527, which was referred to the Committee on Economic Development and Sequential to the Committee of the Whole. The Bill was adopted on first and second

readings on July 5, 1994, and July 19, 1994, respectively. Signed by the Mayor on August 2, 1994, it was assigned Act No. 10-314 and transmitted to both Houses of Congress for its review. D.C. Law 10-188 became effective on September 28, 1994.

§ 9-802. Definitions.

For the purposes of this chapter, the term:

(1) “Bond” or “bonds” means any revenue bond, note, or other obligation (including refunding bonds, notes, or other obligations) used to borrow money to finance, assist in financing, or to refinance undertakings authorized by this chapter.

(2) “Chief Financial Officer” means the Deputy Mayor for Financial Management established pursuant to Mayor’s Order 88-13, as amended, or any successor authorized by the Mayor to review, plan, coordinate, and supervise all financial management programs, policies, strategies, proposals, and budgetary functions of the District.

(3) “Costs” means any and all expenses including expenses for preconstruction and construction, acquisition, alteration, enlargement of furnishing, fixturing and equipping, reconstruction and rehabilitation of the new convention center, including without limitation, the purchase or lease expense for all lands, structures, real or personal property, rights, rights-of-way, roads, franchises, easements and interest acquired or used for, or in connection with the new convention center project, the cost of demolishing or removing buildings or structures on land so acquired, including the expenses incurred for acquiring any lands to which the buildings may be moved or located, the expenses incurred for all utility lines, structures or equipment charges, interest prior to, during and for a period as the Authority may reasonably determine to be necessary for the placing of the new convention center in operation, provisions for reserves for principal and interest for extensions, enlargements, additions and improvements, expenses incurred for architectural engineering, energy efficiency technology, design and consulting, financial and legal services, fees for letters of credit, bond insurance, debt service or debt service reserve insurance, surety bonds or similar credit enhancement instruments, plans, specification studies, surveys, estimates of expenses and of revenues, expenses necessary or incident to determining the feasibility of constructing the new convention center, the financing of such construction,

development and acquisition of the project in operation including, without limitation, a proper allowance for contingencies and the provision of reasonable initial working capital for operating the new convention center.

(4) “Dedicated taxes” means those taxes imposed and surtaxes levied pursuant to §§ 47-1807.2(a)(4) and 47-1808.3(a)(4), § 47-2002.1, § 47-2202.1, and § 47-3206, plus interest and penalties related thereto.

(5) “Existing convention center” means the convention center constructed pursuant to Chapter 6 of Title 9, including any land and improvements appurtenant thereto.

(6) “New convention center” means a comprehensive international trade and exhibition center, to be constructed in 1 or more phases within an area designated pursuant to § 9-816. (Sept. 28, 1994, D.C. Law 10-188, § 201, 41 DCR 5333.)

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-803. Establishment of the Washington Convention Center Authority; purpose of the Authority.

(a) There is established, as an independent authority of the District government, the Washington Convention Center Authority (“Authority”). The Authority shall be a corporate body, created to effectuate certain public purposes, that has a legal existence separate from the District government.

(b) Notwithstanding any other provisions of this chapter, the general purpose of the Authority is to acquire, construct, equip, maintain, and operate the new convention center, in whole or in part, directly or under contract, and engage in other activities as it deems appropriate to promote trade shows and conventions, or other events, closely related to activities of the new convention center, and to maintain and operate the existing convention center until such time as the new convention center is completed and opened for operation.

(c) The Authority shall create an energy-efficient new convention center suitable for multipurpose use for housing trade shows, conventions, cultural, political, musical, educational, entertainment, athletic, or other events, displaying exhibits and attractions, and promoting the historical, natural and recreational resources of the District, including all facilities necessary or convenient to that purpose, regardless of whether the facilities are contiguous, including the following: exhibit halls; auditoriums; theaters; restaurants and other facilities for the purveying of food, beverages, publications, souvenirs, novelties and goods and services of all kinds, whether operated or purveyed directly or indirectly through concessioners, licensees or lessees or otherwise; meeting room facilities and parking areas in connection therewith, including meeting rooms that provide for simultaneous translation capabilities for several languages; related lands, buildings, structures, fixtures, equipment, and personalty appurtenant or convenient to the foregoing; and extension, addition, and improvement of such facilities.

(d) The Authority shall designate the Program Manager or Program Management Consultant, required by § 9-805(g)(1), to serve as the community

liaison to act as a single point of contact to disseminate information to, and to receive comments from, the community. (Sept. 28, 1994, D.C. Law 10-188, § 202, 41 DCR 5333.)

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-804. General powers of Authority.

In addition to the general delegation of powers contained in § 9-810 and subject to the limitations contained in § 9-805, the Authority shall possess the following powers:

(1) To sue and be sued, including the power to bring actions, complaints, and implead in any judicial, administrative, arbitrational, or other action or proceeding and, to the extent permitted by law, to have actions brought against it, and to be impleaded and to defend in these proceedings;

(2) To have a seal and alter the seal at its pleasure;

(3) To make and alter by-laws, rules and regulations, not inconsistent with law, for the administration and regulation of its business and affairs;

(4) To elect, appoint, or hire officers, employees, or other agents of the Authority, including experts and fiscal agents, define their duties, and fix their compensation;

(5) To acquire, by purchase, gift, lease, or otherwise and to own, hold, improve, and use and to sell, convey, exchange, transfer, lease, sublease, and dispose of real and personal property of every kind and character, or any interest therein, for its corporate purposes;

(6) To issue regulations and establish policies for contracting and procurement, provided that these regulations and policies shall provide for the following:

(A) Submission of quarterly reports to the Council regarding the Authority's progress on issues related to local and minority contracting and the hiring of District residents; and

(B) Remedies (including but not limited to cease and desist orders) for noncompliance with any law or regulation contained herein including subchapter III of Chapter 11 of Title 1, and subchapter II of Chapter 11 of Title 1, and all successor acts thereto;

(7) To accept loans or grants of money, materials, or property of any kind from the United States, or any agency or instrumentality thereof, or the District, upon terms and conditions as may be imposed upon the Authority to the extent that the terms and conditions are not inconsistent with the limitations and laws of the District and are otherwise within the powers of the Authority;

(8) To borrow money for any of its corporate purposes and to provide for the payment of the same, as may be permitted under Chapter 2 of Title 1, and the laws of the District;

(9) To issue revenue bonds pursuant to § 9-811;

(10) To enter into contracts with the District, the United States, other public entities, and private entities to achieve its purposes;

(11) To exercise any power usually possessed by public enterprises or private corporations performing similar functions which is not in conflict with Chapter 2 of Title 1, or the laws of the District;

(12) To sell or dispense, upon obtaining a license from the Alcoholic Beverage Control Board pursuant to § 25-110, or to permit others to sell or dispense, upon obtaining a license from the Alcoholic Beverage Control Board, alcoholic beverages for consumption on the premises, but only upon and within the territorial limits of the property of or under the management and control of the Authority. The Authority shall not have the power to sell or dispense alcoholic beverages in unbroken packages for the purpose of permitting the unbroken packages to be carried off the premises. The Authority shall determine and regulate by resolution the conditions under which the sales or dispensing of alcoholic beverages for consumption on the premises shall be made or shall be permitted; and

(13) To do all things necessary or convenient to carry out the powers expressly provided by this chapter. (Sept. 28, 1994, D.C. Law 10-188, § 203, 41 DCR 5333.)

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-805. Limitations on Authority's powers.

(a) The Authority may not adopt an inducement resolution or a resolution authorizing a bond issuance, except for the purpose of refinancing, refunding, or reissuing bonds, unless the proposal has been submitted to the Council for a 30-day review period, excluding Saturdays, Sundays, holidays, and days of Council recess. If, during the 30-day review period, the Council does not adopt a resolution disapproving the submitted proposal, the Authority may take action to implement the proposal. In the event a proposal is disapproved, the Council shall state the reasons for disapproval in the disapproval resolution. The Authority may modify the proposal to address the concerns of the Council, and resubmit the proposal, as modified, for an additional 30-day review period excluding Saturdays, Sundays, holidays, and days of Council recess.

(b) Except as provided in § 9-814, no revenues collected on behalf of the Authority and transferred to or deposited in the Washington Convention Center Authority Fund established pursuant to § 9-809 shall be commingled with any funds of the District.

(c) With regard to the design of the new convention center:

(1) The Authority shall design and construct a new convention center to minimize the life cycle cost, and dependence on petroleum-based fuels of the facility by utilizing energy efficiency, water conservation, or solar or other renewable energy technologies.

(2) The Authority shall ensure that the design and construction of the new convention center shall employ state-of-the-art design, engineering, and technology to minimize energy consumption per-gross-square-foot to the extent that the payback period for capital costs incurred to reduce annual operating costs shall be less than 10 years.

(3) The Authority may assist the District in public street and alley improvements on, or adjacent to, frontages facing the new convention center. These improvements may include streetscape improvements, landscaping, street furniture, lighting, banners, sidewalks, curbs, or building facades.

(d) The Authority shall in no way interfere with or attempt to acquire site control or ownership of the existing convention center without submission of a resolution to the Council for its approval.

(e) In the event that the Authority constructs the new convention center below ground, the District shall retain ownership of up to 15% of the developed air rights, for the purpose of providing economic development opportunities for community development corporations engaged in neighborhood economic development, with the ability to become a joint-venture partner on commercial or residential development over the New Convention Center, provided that the sale or lease of the air rights is not needed to finance the new convention center.

(f) Any and all reasonable, necessary, and verified preconstruction costs for the new convention center that are borne by the District government shall be reimbursed by the Authority.

(g)(1) The Authority shall adopt an organizational approach for development of the new convention center whereby the Authority's staff, augmented by management and technical personnel of a Program Manager, or Program Management Consultant, will manage and oversee all activities during every phase of the development program. The Authority shall complete the new convention center construction project using any of the following contracting methods:

(A) When the plans and specifications and the guaranteed maximum price drawings for the new convention center are complete, the Authority shall issue a Request for a Proposal for a developer. On the basis of the submitted proposals, the Authority shall select the developer who shall complete the design and construct the new convention center for a guaranteed price by assembling the necessary team of designers, architects, developers, and others, and posting a performance bond, or obtaining other insurance, to insure that design and time requirements shall be met for the guaranteed price; or

(B) When the plans and specifications and the guaranteed maximum price drawings for the new convention center are complete, the Authority shall issue a Request for a Proposal for a construction manager that shall require proposals containing the construction-manager fee, the guaranteed maximum price of completing the design and constructing the new convention center, and sharing with the Authority any savings between total costs and the guaranteed maximum price. On the basis of the submitted proposals, the Authority shall select the construction manager who shall complete the design and construct the new convention center for a guaranteed price by assembling the necessary team of designers, architects, developers, and others, and posting a performance bond, or obtaining other insurance, to insure that design and time requirements shall be met for the guaranteed price.

(2) The Authority's contract with the developer or construction manager selected pursuant to paragraph (1) of this subsection shall require all devel-

oper and construction-manager contracts to comply with subchapter III of Chapter 11 of Title 1, and subsection II of Chapter 11 of Title 1, and all successor acts thereto.

(h) At least 51% of the Authority's employees shall be District residents. At least 51% of every contractor's employees hired after the contractor enters into a contract with the Authority, or with the developer or construction manager, to work on projects of the Authority shall be District residents.

(i) The Authority's contract with the developer or construction manager selected pursuant to subsection (g)(1) of this section shall require the developer or construction manager to demonstrate that the developer or construction manager is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the project.

(j) All operating costs of the existing convention center shall be the responsibility of the Authority after September 28, 1994.

(k) All land and improvements acquired by the Authority to construct the new convention center shall be held in the name of the Authority, except that title to the property shall not be transferred by the Authority to any person or entity other than the District government. (Sept. 28, 1994, D.C. Law 10-188, § 204, 41 DCR 5333.)

Section references. — This section is referred to in §§ 9-803, 9-804, 9-809, 9-811, and 9-814. **Legislative history of Law 10-188.** — See note to § 9-801.

§ 9-806. Establishment of Board of Directors.

(a)(1) Except as provided in § 9-818(b), the Authority shall be governed by a Board of Directors ("Board") which shall be comprised of 9 members, 1 of whom shall be the Chief Financial Officer of the District and 1 of whom shall be the Director of the Office of Tourism and Promotions, both of whom shall serve as ex-officio, voting members of the Board.

(2) The 7 public Board members shall be appointed by the Mayor with the advice and consent of the Council by resolution.

(3) Of the 7 public Board members, 1 shall be from the hospitality industry, 1 shall be from organized labor, and the remaining 5 shall have proven expertise in municipal finance, business finance, economic development, construction, or tourism.

(b)(1) Of the 7 public Board members initially appointed to the Board, 2 shall serve 4-year terms, 2 shall serve 3-year terms, 2 shall serve 2-year terms and 1 shall serve a 1-year term. All subsequent terms shall be 4-year terms. No Board member shall serve more than 2 consecutive terms.

(2) A member of the Interim Board established pursuant to § 9-818(b) may serve as a Board member initially appointed to the Board for a term not to exceed 3 years and may not serve a subsequent consecutive term.

(c) The Mayor shall transmit resolutions for the appointments of the 7 public Board members to the Council within 30 days of September 28, 1994.

(d) Any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired term of the Board member whose vacancy is being filled. If any Board member is appointed to fill an unexpired term with more than 2

years remaining in the term, upon expiration of the term, that Board member shall be deemed to have served a full 4-year term.

(e) The Mayor shall appoint a chairperson of the Board from among the 7 public Board members with the advice and consent of the Council by resolution.

(f) No more than 2 public Board members may be appointed from any 1 ward of the District.

(g) Each Board member shall be a resident of the District or establish residency not later than 6 months after appointment to the Board. The Mayor shall remove any Board member for failure to establish or maintain residency or for misconduct or neglect of duty (as defined by the Board in its by-laws) after notice to the Board member.

(h) Should a Board member be indicted for the commission of a felony, the Board member shall be automatically suspended from serving on the Board. Upon a final determination of guilt or innocence, the term of the Board member shall, respectively, be automatically terminated or reinstated.

(i) The Board shall meet no less than once every 60 days and shall be subject to the provisions of § 1-1504.

(j) Five Board members shall constitute a quorum for the transaction of business, and an affirmative vote of a majority shall be necessary for any valid Board action. For purposes of issuing bonds, and adopting budgets and financial plans, the Chief Financial Officer of the District shall be a member of the majority. No vacancy in membership, except a vacancy of the Chief Financial Officer of the District, shall impair the right of a quorum to exercise all rights and perform all duties of the Board.

(k) Board members not otherwise compensated by the District shall be compensated at the rate equal to the daily equivalent of the highest step of a grade 15 of the District schedule established pursuant to Chapter 6 of Title 1, while engaged in the actual performance of Board duties not to exceed \$10,000 per annum. A Board member who is also an officer or employee of the District or the United States shall serve without compensation. Board members shall be reimbursed for all reasonable and necessary expenses incurred while engaged in official duties of the Board.

(l) The powers of the Board shall not be limited by any articles of incorporation or by-laws adopted by the Interim Board established pursuant to § 9-818. (Sept. 28, 1994, D.C. Law 10-188, § 205, 41 DCR 5333.)

Section references. — This section is referred to in § 9-818.

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-807. Duties of the Board.

(a) The Board shall have the following general duties:

(1) Adopt and publish internal operating rules for the conduct of Board meetings;

(2) Develop policies for the management, maintenance, and operation of the existing convention center and the new convention center including concessions, vehicle parking facilities, or other related facilities;

(3) Adopt rules and regulations consistent with Chapter 15 of Title 1, governing the operation and use of the existing convention center and the new convention center;

(4) Develop and establish a personnel system with rules and regulations setting forth minimum standards for all employees including pay, contract terms, vacations, leave, retirement, residency requirements, health and life insurance, employee disability and death benefits. The personnel system shall be in place no later than 6 months after September 28, 1994. The personnel rules and regulations shall require that no employee shall engage in outside employment or private business activity or have any direct or indirect financial interest that conflicts, or would appear to conflict, with the fair, impartial, and objective performance of the employee's assigned duties and responsibilities;

(5) Select, employ, and fix the compensation for, a General Manager to the existing convention center and the new convention center and for the staff of the Board, as it deems necessary. All staff shall serve at the pleasure of the Board; and

(6) Delegate to the General Manager, by a majority vote of the Board, any authority granted to the Board under this subsection.

(b) The Board shall prepare and submit to the Mayor an operating budget for fiscal year 1995 and all subsequent fiscal years.

(1) For the purposes of this subsection, the term "operating budget" shall include only funds for personnel, show operations, travel, development, and Board expenses.

(2) For the purposes of this subsection, the term "operating budget" shall not include funds or payments relating to debt service, repairs, maintenance, or capital improvements.

(c) The Board shall submit the fiscal year 1995 operating budget as soon as practicable. The Board shall submit the fiscal year 1996 operating budget and all subsequent operating budgets for the Authority to the Mayor on the date that other District departments and agencies are required to submit their budgets to the Mayor.

(d) The Board shall include with its operating budget submission the following information:

(1) A list of any memoranda, agreements, and contracts in excess of \$25,000 which relate directly to personnel, show operations, travel, development, or Board expenses; and

(2) A financing plan for at least the next 5 years showing the following:

- (A) Projected income by source;
- (B) Projected operating expenditures by object class and program;
- (C) Capital expenditures and financing;
- (D) Balances and changes in reserves; and
- (E) Debt service coverage.

(e) The Board shall submit, within 120 days after the end of each District government fiscal year, to the Mayor, the Council, and the Auditor of the District of Columbia, a detailed annual report setting forth a description of the Authority's operations and accomplishments during the year, including an objective evaluation of the degree of success attained, including:

- (1) An analysis of event attendance;
- (2) Income and expenditures of the Authority during the year in accordance with sources and object classes established by the financial management system, budgeted, and audited actual;
- (3) Audited actual capital expenditures and financing;
- (4) Audited asset, liability, and fund equity balances at the end of the fiscal year;
- (5) An analysis of work force;
- (6) Recommendations as to the future management and operation of Authority; and
- (7) Other information as shall be deemed pertinent by the Mayor, the Council, and the Auditor of the District of Columbia.

(f) The Board shall contract with the independent certified public accountant who annually audits the books and accounts of the District of Columbia to audit the books and accounts of the Authority and transmit the audit to the Mayor, the Council, and the Auditor of the District of Columbia within 120 days of the end of the District government fiscal year.

(g) The Board shall annually develop and adopt a multiyear financial plan no less than 90 days prior to the beginning of each fiscal year. The Board shall transmit the multiyear financial plan to the Mayor and Council within 10 days of its adoption. Each multiyear financial plan shall contain the following:

(1) A description of the Authority's revenues, expenditures, reserves, debt service, cash resources and uses, and capital-improvements expenditures and financing for at least the next 5 years;

(2) If the budget of the Authority for the upcoming fiscal year is not balanced, a statement of the means by which it will be brought into balance; and

(3) Any other matters that the Authority, the Mayor, or the Council deems relevant.

(h) The Board shall submit final financial requirements and a feasibility analysis for the construction of the new convention center to the Mayor and Council within 24 months of September 28, 1994.

(i) The Board shall carry comprehensive liability insurance sufficient to protect the Authority, the Board, the members, officers, and employees of the Board, and the lessees or occupants, and the District government against risks associated with the exercise by the Authority or the Board of any authority conferred by this chapter, provided, however, that no Board member shall be personally liable for any act or omission of the Authority except with regard to fraudulent or criminally prosecutable acts by any Board member in connection with an act or omission of the Authority. (Sept. 28, 1994, D.C. Law 10-188, § 206, 41 DCR 5333.)

Section references. — This section is referred to in § 9-818.

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-808. General Manager; appointment and duties.

(a) The Board, by majority vote, shall employ a General Manager to run the day-to-day affairs of the new convention center and existing convention center.

(b) The General Manager shall perform the following duties and responsibilities:

(1) Assist in the preparation of the budgets and annual reports;

(2) Administer all operating policies, rules, and regulations adopted by the Board;

(3) Employ personnel;

(4) Promote and secure existing convention center and new convention center bookings; and

(5) Perform such other duties as may be authorized by the Board for the effective and efficient management of the existing convention center and the new convention center.

(c) The termination of the General Manager shall require the concurrence of a majority of the Board. (Sept. 28, 1994, D.C. Law 10-188, § 207, 41 DCR 5333.)

Section references. — This section is referred to in § 9-818.

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-809. Washington Convention Center Authority Fund; transfer and pledge of revenues.

(a) There is established the “Washington Convention Center Authority Fund” (“Fund”) to be operated by the Authority.

(b) The monies in the Fund shall not be a part of, nor lapse into, the General Fund of the District, except as provided in § 9-814.

(c) As of September 28, 1994, any and all dedicated taxes collected by the Mayor as an agent for the Authority shall be transferred to the Fund on a monthly basis for the payment of all expenses necessary for debt service, reserve funds, repair, maintenance, issuance costs, and preconstruction costs, other expenses necessary or incident to determining the feasibility of constructing the new convention center, and all other costs of operating and managing the Authority.

(d) Any pledge by the Authority of any revenues on deposit in the Fund shall be effective, valid, and binding from the time the pledge is made. The pledged revenues, once deposited in the Fund, shall be immediately subject to the lien of the pledge, whether or not there has been any physical delivery. The lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against any person receiving the distribution of tax revenues, whether or not the parties have notice of the pledge. The bond resolution of the Authority by which the pledge of the proceeds of any taxes is created is not required to be filed or recorded.

(e) The District pledges to and agrees with the Authority and any holders of the bonds, notes or other obligations issued by the Authority and secured by the Fund that the District shall not limit, restrict, or in any way impair the collection, transfer, deposit, or disbursement of revenues in the Fund until the

principal of, premium if any, and interest on the Authority debt has been paid and discharged.

(f) Except as provided in § 9-705(b), all assets and liabilities of the Washington Convention Center Enterprise Fund, established pursuant to § 9-605, shall be transferred to the Fund. (Sept. 28, 1994, D.C. Law 10-188, § 208, 41 DCR 5333.)

Section references. — This section is referred to in §§ 9-805, 47-1807.2a, 47-1807.3a, 47-2002.2, and 47-3206.

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-810. Delegation of Council authority to issue bonds.

The Council delegates to the Authority the power of the Council under § 47-334, to issue revenue bonds, notes, and other obligations to finance, refinance, or assist in the financing or refinancing of any undertakings of the new convention center pursuant to this chapter. (Sept. 28, 1994, D.C. Law 10-188, § 209, 41 DCR 5333.)

Section references. — This section is referred to in § 9-804.

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-811. Power of the Authority to issue bonds and notes.

(a) Subject to the limitations in § 9-805, the Authority may at any time, and from time to time, issue bonds and notes or other obligations, by resolution, in 1 or more series to finance the new convention center. The resolution shall name the Chief Financial Officer of the District as the authorized delegate to execute all documents related to the bond financings or refinancings. In addition, the Authority may issue notes to renew notes and bonds to pay notes, including the interest thereon. Whenever expedient, the Authority may refund bonds by the issuance of new bonds.

(b) Bonds of the Authority are obligations payable from revenues of the Authority from whatever source derived, including certain designated taxes, operations of the new convention center, lease payments, earnings on certain funds, and any other funds available to the Authority which may lawfully be used for these purposes.

(c) Regardless of their form or character, bonds of the Authority are negotiable instruments for all purposes of Title 28, subject only to the provisions of the bonds and notes for registration.

(d) No official, employee, or agent of the Authority shall be held personally liable solely because a bond or note is issued.

(e) The issuance and performance of bonds, notes, and other obligations by the Authority as contemplated in this chapter and the adoption of resolutions authorizing such bonds, notes, and other obligations shall be done in compliance with the requirements of this chapter, but shall not be subject to Chapter 15 of Title 1.

(f) The Authority shall have the power to borrow money and to issue revenue bonds regardless of whether or not the interest payable by the Authority incident to such loans or revenue bonds or the income derived by the

holders of the evidence of such indebtedness or revenue bonds is, for the purposes of federal taxation, includable in the taxable income of the recipients of these payments or is otherwise not exempt from the imposition of taxation on the recipients.

(g) The Authority shall have the power to contract with the holders of its notes or bonds as to the custody, collection, securing, investment, and payment of any monies of the Authority and of any monies held in trust or otherwise for the payment of notes or bonds. (Sept. 28, 1994, D.C. Law 10-188, § 210, 41 DCR 5333.)

Section references. — This section is referred to in § 9-804.

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-812. Terms for sale of bonds; additional bond and note provisions.

(a) The Authority may stipulate by resolution the terms for sale of its bonds in accordance with this chapter, including the following:

- (1) The date a note or bond bears;
- (2) The date a bond or note matures, provided that notes shall not mature later than 10 years from the date of original issuance and bonds shall not mature later than 30 years from the date of original issuance;
- (3) Whether bonds are issued as serial bonds, as term bonds, or a combination of the two;
- (4) The denomination;
- (5) Any interest rate or rates, or variable rate or rates changing from time to time, or premium or discount applicable;
- (6) The registration privileges;
- (7) The medium and method for payment; and
- (8) The terms of redemption.

(b) The Authority may sell its bonds at public or private sale and may determine the price for sale.

(c) A resolution authorizing the sale of bonds may contain any of the following provisions, in which case these provisions shall be made part of the contract with holders of the bonds:

- (1) The custody, security, expenditure, or application of proceeds of the sale of bonds or notes of the Authority ("proceeds"), a pledge of the proceeds to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;
- (2) A pledge of Authority revenues to secure payment and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;
- (3) A pledge of assets of the Authority, including mortgages and obligations securing mortgages, to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;
- (4) The proposed use of gross income from any mortgages owned by the Authority and payment of principal of mortgages owned by the Authority;
- (5) The proposed use of reserves or sinking funds;

(6) The proposed use of proceeds from the sale of bonds or notes and a pledge of proceeds to secure payment;

(7) Any limitations on the issuance of bonds or notes, including terms of issuance and security, and the refunding of outstanding or other bonds;

(8) Procedures for amendment or abrogation of a contract with holders of the bonds, the amount of bonds or notes, the holders of which must consent to the amendment, and the manner in which consent may be given;

(9) Any vesting in a trustee property, power and duties, which may include the power and duties of a trustee appointed by holders of the bonds;

(10) Limitations or abrogations of the right of holders of the bonds to appoint a trustee;

(11) A defining of the nature of default in the obligations of the Authority to the holders of the bonds and providing the rights and remedies of holders of the bonds in the event of default, including the right to the appointment of a receiver, in accordance with the general laws of the District and this chapter; and

(12) Any other provisions of like or different character which affect the security of holders of the bonds.

(d) A pledge of the Authority is binding from the time it is made. Any funds, or property pledged, are subject to the lien of a pledge without physical delivery. The lien of a pledge is binding as against parties having any tort, contract, or other claim against the Authority regardless of notice. Neither the resolution nor any other instrument creating a pledge need be recorded.

(e) The signature of any officer of the Authority which appears on a bond remains valid if that person ceases to hold office.

(f) The Authority may secure bonds by a trust indenture between the Authority and a corporate trustee which has trust company powers within the District.

(g) A trust indenture of the Authority may contain provisions for protecting and enforcing the rights and remedies of holders of the bonds in accordance with the provisions of the resolution authorizing the sale of bonds.

(h) Subject to preexisting agreements with the holders of the bonds or notes, the Authority may purchase its own bonds which may then be cancelled. The price the Authority pays in purchasing its own bonds cannot exceed the following limits:

(1) If the bonds are redeemable, the price cannot exceed the redemption price then applicable plus accrued interest to the next interest payment; or

(2) If the bonds are not redeemable, the price cannot exceed the redemption price applicable on the first date after the purchase upon which the bonds or notes become subject to redemption plus accrued interest to that date.

(i) The Authority may establish special or reserve funds in furtherance of its authority under this chapter. Notwithstanding subsections (a) and (b) of this section, § 9-814, and other applicable District law, and subject to agreements with holders of the bonds, the Authority shall manage its own funds, and may invest funds not required for disbursement in a manner the Authority determines to be prudent.

(j) The bonds of the Authority are legal instruments in which public officers and public bodies of the District, insurance companies, insurance company

associations, and other persons carrying on an insurance business, banks, bankers, banking institutions including savings and loan associations, building and loan associations, trust companies, savings banks, savings associations, investment companies, and other persons carrying on a banking business, administrators, guardians, executors, trustees, and other fiduciaries, and other persons authorized to invest in bonds or in other obligations of the District, may legally invest funds, including capital, in their control. The bonds are also securities which legally may be deposited with and received by public officers and public bodies of the District or any agency of the District for any purpose for which the deposit of bonds or other obligations of the District is authorized by law.

(k) Obligations issued under the provisions of this chapter do not constitute an obligation of the District, but are payable solely from the revenues or assets of the Authority. Each obligation issued under this chapter must contain on its face a statement that the Authority is not obligated to pay principal or interest except from the revenues or assets pledged and that neither the faith and credit nor the taxing power of the District is pledged to the payment of the principal or interest on an obligation.

(l) Assets and income of the Authority shall be exempt from District taxation.

(m) Income from bonds issued by the Authority shall be exempt from District taxation except for estate and gift taxes. (Sept. 28, 1994, D.C. Law 10-188, § 211, 41 DCR 5333.)

Section references. — This section is referred to in § 9-815.

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-813. District pledges.

The District pledges to the Authority that the District will not limit or alter rights vested in the Authority to fulfill agreements made with holders of the bonds, or in any way impair the rights and remedies of the holders of the bonds until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the holders of the bonds are fully met and discharged. The Authority is authorized to include this pledge of the District in any agreement with the holders of the bonds. (Sept. 28, 1994, D.C. Law 10-188, § 212, 41 DCR 5333.)

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-814. Transfer of excess cash.

(a) If, at the end of a fiscal year, the balance of cash and investments of the Authority exceeds the balance of current liabilities and reserves, the excess shall be transferred, in cash, to the General Fund of the District.

(b) Except as provided in subsection (c) of this section, for the purposes of this section, the term “reserves” means:

(1) In the case of debt service reserves, a reserve of cash and investments equal to not more than the maximum annual debt service on outstanding bonds and notes issued by the Authority;

(2) In the case of an operating reserve, a reserve of cash and investments equal to not more than 1.5 times the annual operating expenditures; and

(3) In the case of a capital replacement reserve, a reserve of cash and investments equal to not more than 2.5% of the total capital cost for the new convention center, adjusted for inflation.

(c) If the Authority or the bond-rating agencies determine that any of the reserves must be higher than the levels calculated under subsection (b) of this section, the Authority must include the justification for the higher levels in the inducement resolution or the resolution authorizing a bond issuance submitted to the Council pursuant to § 9-805(a). (Sept. 28, 1994, D.C. Law 10-188, § 213, 41 DCR 5333.)

Section references. — This section is referred to in §§ 9-805, 9-809, and 9-812.

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-815. District of Columbia repayment option.

The District of Columbia retains the right to direct the Authority to purchase its own bonds and notes subject to the terms and conditions of § 9-812(h), for the purpose of dissolving or altering the Authority after such bonds and notes are cancelled or defeased. (Sept. 28, 1994, D.C. Law 10-188, § 214, 41 DCR 5333.)

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-816. Location of new convention center.

(a) The new convention center should be located within an area bounded by 7th Street, N.W., N Street, N.W., 9th Street, N.W., and Mount Vernon Square, N.W.

(b) The Mayor may evaluate and consider other alternative sites in which to locate the new convention center. The Mayor should specifically evaluate and consider 2 alternative sites: the site bounded by New York Avenue, N.E., 1st Street, N.E., M Street, N.E., and the rail line to Florida Avenue; and the site located at the Anacostia Metro.

(c) If the Mayor determines that the new convention center should be located at a site other than the site described in subsection (a) of this section, then the Mayor may designate the alternative site as the site for the new convention center with the advice and consent of the Council by resolution. (Sept. 28, 1994, D.C. Law 10-188, § 215, 41 DCR 5333.)

Section references. — This section is referred to in § 9-802.

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-817. Merit personnel system inapplicable.

Chapter 6 of Title 1 shall not apply to employees of the Authority. (Sept. 28, 1994, D.C. Law 10-188, § 216, 41 DCR 5333.)

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-818. Transition provisions; establishment of Interim Board of Directors.

(a) Until the Board develops and establishes a personnel system pursuant to § 9-807(a)(4) and employs a General Manager pursuant to § 9-808(a), the personnel system developed and established pursuant to § 9-603(a)(4), shall remain in effect.

(b)(1) There is established an interim Board of Directors (“Interim Board”) consisting of the 5 members of the Convention Center Board of Directors established pursuant to § 9-602, to manage the affairs of the Authority until the Board established pursuant to § 9-806 convenes its first meeting.

(2) The Interim Board shall prepare and submit an operating budget pursuant to § 9-807(b) through (f).

(3) Upon the convening of the first meeting of the Board, the Interim Board shall dissolve. (Sept. 28, 1994, D.C. Law 10-188, § 217, 41 DCR 5333.)

Section references. — This section is referred to in § 9-806.

Legislative history of Law 10-188. — See note to § 9-801.

§ 9-819. Establishment of Advisory Committee.

(a) There is established a Washington Convention Center Advisory Committee (“Committee”).

(b) The membership on the Committee shall consist of 19 members to be appointed as follows:

- (1) Three members appointed by the Mayor from the community;
- (2) One member appointed by ANC 2F;
- (3) One member appointed by ANC 2C;
- (4) The Chairman of the Council or the Chairman’s representative;
- (5) The Chairperson of the Council Committee on Economic Development or the Chairperson’s representative;
- (6) The Councilmember from Ward 2 or the Councilmember’s representative;
- (7) Two appointees chosen by the Chairman of the Council;
- (8) Two appointees chosen by the Chairperson of the Council Committee on Economic Development;
- (9) Four appointees chosen by the Council member from Ward 2;
- (10) One representative appointed by the local chapter of the American Institute of Architects;
- (11) One representative appointed by the local chapter of the American Planning Association; and

(12) One representative appointed by the Metropolitan Washington Council, AFL-CIO.

(c) Members of the Committee should have expertise in architecture, urban design, economic development, planning, law, transportation, affirmative action, or local community issues.

(d) Members shall serve without compensation.

(e) Prior to adoption of a Request for Proposals for architectural, urban design planning, economic development planning consultants or contractors, or a build/design team or project/construction management team, the Authority shall consult with and receive comments from the Committee.

(f) The Committee shall advise the Authority with respect to the following:

(1) The development of design guidelines, ensuring that the new convention center design is consistent with the surrounding residential neighborhood, the L'Enfant Plan, and the historic preservation and significance of surrounding structures;

(2) The needs of the community, including providing retail uses to serve both the community and visitors to the new convention center, which are accessible to the community, providing adequate security in and around the new convention center;

(3) Parking issues, including providing adequate on-site parking for persons using and employed at the new convention center and preventing parking in the surrounding neighborhood by non-residents of that neighborhood.

(4) Transportation issues, including proposals for directing traffic to and from the new convention center away from the surrounding residential streets, providing a method of truck staging to minimize any adverse impact on the surrounding residential neighborhood, restricting the parking of trucks, trailers, and buses to the new convention center or other areas outside of the residential area surrounding the new convention center, closing of streets on the new convention center site, providing for adequate pull-off areas for taxicabs, buses, and hotel and other shuttles, and discouraging entrances and exits from being located on residential streets;

(5) Pedestrian movement issues, including locating entrances to the new convention center to facilitate the movement of pedestrians between the new convention center and the Mount Vernon Square Metro Rail Station, ensuring direct access to the Mount Vernon Square Metro Rail Station between M Street and 9th Street, N.W., and the new convention center;

(6) Economic development spin-off opportunities and needs for surrounding neighborhoods, including discouraging an over-concentration of street vendors;

(7) Economic development citywide;

(8) Participation by local, small, and disadvantaged businesses in all aspects of finance, construction, and operations;

(9) The development of environmental guidelines, including the mitigation of adverse noise and air quality impact, the adequacy of available public works infrastructure and utilities, and providing that the design and construction activities remain sensitive to residential needs of the neighboring historic districts, churches, and buildings; and

(10) Any other issues directly related to the building of the new convention center.

(g) The Committee shall advise the Authority until completion of construction, opening, and completion of the last phase of the new convention center, at which time it shall be dissolved. (Sept. 28, 1994, D.C. Law 10-188, § 218, 41 DCR 5333.)

Legislative history of Law 10-188. — See note to § 9-801.

TITLE 10. WEIGHTS, MEASURES, AND MARKETS.

Chapter

1. Weights, Measures, and Markets..... §§ 10-101 to 10-138.
2. Retail Service Stations..... §§ 10-201 to 10-242.

CHAPTER 1. WEIGHTS, MEASURES, AND MARKETS.

Sec.	Sec.
10-101. Department of Weights, Measures, and Markets created; appointment of Director, assistants and employees.	10-119. Sale of wood.
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10-103. Director to give bond and take oath.	10-121. Sale of shucked oysters, fish, meat, butter, and cheese.
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10-116. Standard containers for sale of fruits, vegetables, and other dry commodities; no sales except in standard containers or by weight or count.	10-134. "Person" defined; meaning of singular words.
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§ 10-101. Department of Weights, Measures, and Markets created; appointment of Director, assistants and employees.

(a) There is hereby created an executive department in the government of the District of Columbia which shall be known as the Department of Weights, Measures, and Markets. Such Department shall be in charge of a Director of Weights, Measures, and Markets, who shall be appointed by and be under the direction and control of the Mayor of the District of Columbia. He shall have the custody and control of such standard weights and measures of the United

States as are now or shall hereafter be provided by the District of Columbia, which shall be the only standards for weights and measures in said District.

(b) The Mayor is also authorized to appoint, on the recommendation of the Director, such assistants, inspectors, and other employees for which Congress may, from time to time, provide. (Mar. 3, 1921, 41 Stat. 1217, ch. 118, § 1; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-101.)

Cross references. — As to annual estimate of salaries, see § 47-207.

As to Council's authority to regulate, modify or eliminate license requirements, see § 47-2842.

As to Council's authority to promulgate regulations, see § 47-2844.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Department of Weights, Measures and Markets abolished. — The Department of

Weights, Measures, and Markets was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, established under the direction and control of a Commissioner a Department of Licenses and Inspection, set out the purpose, organization, and functions of the Department, established the Inspection Division to administer and enforce the standard weights and measures law, transferred to the Department the functions and positions of the Department of Weights, Measures, and Markets and abolished the latter Department in accordance with the provisions of 1952 Reorganization Plan No. 5. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions vested in the Department of Licenses and Inspections by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections.

§ 10-102. Name change.

After April 11, 1946, the Superintendent of Weights, Measures, and Markets shall be known as the Director of Weights, Measures, and Markets. (Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-101a.)

Department of Weights, Measures and Markets abolished. — See note to § 10-101.

§ 10-103. Director to give bond and take oath.

The Director shall, before entering upon the performance of his duties, give bond to the District of Columbia in the penal sum of \$5,000, signed by 2 sureties or by a bonding company, to be approved by the Mayor, conditioned on the faithful discharge of the duties of his office, and shall take and subscribe an oath or affirmation before the Mayor that he will faithfully and impartially discharge the duties of his office, which bond and oath shall be deposited with

the Mayor. (Mar. 3, 1921, 41 Stat. 1217, ch. 118, § 2; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-102.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Department of Weights, Measures and Markets abolished. — See note to § 10-101.

§ 10-104. Exclusive powers of Director; examination of measuring devices; condemnation; charges by Mayor.

(a) The Director and, under his direction, his assistants and inspectors, shall have exclusive power to perform all the duties provided in this chapter. They shall, at least every 6 months, and oftener when the Director thinks proper, inspect, test, try, and ascertain whether or not they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical devices for weighing or measuring, and all tools, appliances, or accessories connected with any or all such instruments or mechanical devices for weighing or measuring used or employed in the District of Columbia by any owner, agent, lessee, or employee in determining the weight, size, quantity, extent, area, or measurement of quantities, things, produce, or articles of any kind offered for transportation, sale, barter, exchange, hire, or award, or the weight of persons for a charge or compensation, and shall approve and seal, stamp, or mark, in the manner prescribed by the Council of the District of Columbia, such devices or appliances as conform to the standards kept in the Office of the Director, and shall seize and destroy or mark, stamp, or tag with the word "condemned" such as do not conform to the standards, and shall also mark the date of such condemnation upon the same. Any weight, scale, beam, measure, weighing or measuring device of any kind which shall be found to be unsuitable for the purpose for which it is intended to be used or of defective construction or material shall be condemned. No person shall use or, having the same under his control, shall permit to be used for any of the purposes enumerated in this chapter any weight, scale, beam, measure, weighing or measuring device whatsoever unless the same has been approved in accordance with the provisions of this chapter within 6 months prior to such use, or that does not conform to the standards kept in the Office of the Director of Weights, Measures, and Markets, or that does not bear the approval seal, stamp, or mark prescribed by the Council, or which, having been condemned, has not thereafter been approved as provided in this chapter.

(b) Any person who shall acquire or have in his possession after March 3, 1921 any scale, weighing instrument, or nonportable measure or measuring

device, subject to inspection or test under the provisions of this chapter, which has not been approved in accordance with the provisions of this chapter within 6 months prior to acquisition or possession and which does not bear the approval seal, stamp, or mark prescribed by the Council, shall notify the Director in writing at his office, giving a general description thereof, and the street and number or other location where same may be found, and it shall be the duty of the Director to cause the same to be inspected and tested within a reasonable time after receipt of such notice. Any person who shall acquire or have in his possession after March 3, 1921, any portable measure or measuring device, subject to inspection or test under the provisions of this chapter, which has not been approved in accordance with the provisions of this chapter within 6 months prior to acquisition or possession and which does not bear the approval seal, stamp, or mark prescribed by the Council shall cause the same to be taken to the Office of the Director for inspection and test.

(c) Every peddler, hawker, huckster, transient merchant, or other person with no fixed or established place of business shall, before using any weight, scale, measure, weighing or measuring device for any of the purposes enumerated in this chapter, cause the same to be taken to the Office of the Director for inspection and test semiannually, and shall not use for the purposes herein mentioned any weight, scale, measure, weighing or measuring device which has not been approved within 6 months prior to the time of such use, and does not bear the approval seal, stamp, or mark prescribed by the Council.

(d) The Mayor of the District of Columbia shall make a charge of \$15 per hour, per person, for the examination, inspection, and sealing and for the reinspection on recalls due to condemnations of the following weighing and measuring equipment used or owned by agencies of the federal government and by private suppliers under contract to departments of the District of Columbia government:

- (1) Vehicle type scales;
- (2) Hopper type scales;
- (3) Hanging Spring type scales — 20 pounds or less;
- (4) Hanging Spring type scales — over 20 pounds;
- (5) Computing scales, conventional;
- (6) Computing scales, prepacked;
- (7) Counter scales, except counter platform;
- (8) Counter platform;
- (9) Platform scales — up to 500 pounds;
- (10) Platform scales — over 500 pounds;
- (11) Crane scales;
- (12) Dormant type scales — over 10,000 pounds;
- (13) Dormant type scales — 2,000 to 10,000 pounds;
- (14) Dormant type scales — up to 2,000 pounds;
- (15) Personal weighing scales, including physician type;
- (16) Prescription scales, types A, B, C, including weights;
- (17) Analytical balances, including chain-o-matic type and weights;
- (18) Jewelry scales;
- (19) Abattoir scales;

- (20) Butcher beam;
- (21) Gasoline pumps;
- (22) Liquid measures up to 5 gallons;
- (23) Meters on trucks used for petroleum products; and
- (24) Bulk plant meters. (Mar. 3, 1921, 41 Stat. 1217, ch. 118, § 3; Apr. 27, 1945, 59 Stat. 96, ch. 99, § 1; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-103; Aug. 14, 1982, D.C. Law 4-136, § 2, 29 DCR 2754.)

Cross references. — As to adulteration of food and drugs, see §§ 33-101 to 33-110.

As to disposition of fees, see § 47-127.

Legislative history of Law 4-136. — Law 4-136, the "District of Columbia Weighing and Measuring Equipment Inspection Charge Act of 1982," was introduced in Council and assigned Bill No. 4-385, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on May 25, 1982 and June 8, 1982, respectively. Signed by the Mayor on June 21, 1982, it was assigned Act No. 4-202 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 402(194) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Department of Weights, Measures and Markets abolished. — See note to § 10-101.

§ 10-105. Inspection required after repair; alteration of condemnation tag prohibited.

No person shall use or, having the same under his control, permit to be used, any weight, scale, measure, weighing or measuring device, or any attachment or part thereof after the same has been altered or repaired without the same having been inspected and approved as provided in this chapter after such alterations or repairs have been made, and no persons shall alter, obliterate, detach, obscure, or conceal any condemnation seal, stamp, mark, tag, or label, attached or impressed by the Director or any of his assistants or inspectors, without written permission of the Director. (Mar. 3, 1921, 41 Stat. 1218, ch. 118, § 4; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-104.)

Department of Weights, Measures and Markets abolished. — See note to § 10-101.

§ 10-106. Obstruction of inspection prohibited.

No person shall neglect, fail, or refuse to exhibit any weight, scale, beam, measure, weighing or measuring device, subject to inspection or test under the provisions of this chapter, to the Director or any of his assistants or inspectors for the purpose of inspection and test and no persons shall in any manner obstruct, hinder, or molest the Director or any of his assistants, inspectors, or

other employees in the performance of their duties. (Mar. 3, 1921, 41 Stat. 1218, ch. 118, § 5; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-105.)

Department of Weights, Measures and Markets abolished. — See note to § 10-101.

§ 10-107. Record of inspections.

The Director shall keep in his office a record of weighing and measuring devices inspected, which record shall show the type of device, the name and address of the owner, the date of inspection, and whether the same was approved or condemned. Such record shall be open to the public during regular office hours. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 6; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-106.)

Department of Weights, Measures and Markets abolished. — See note to § 10-101.

§ 10-108. False measure prohibited; sale of commodities.

No person shall sell, offer for sale, keep, or expose for sale anywhere in the District of Columbia any commodity of any kind as a weight, measure, or numerical count greater than the actual or true weight, measure, or numerical count thereof, and no person shall take or attempt to take more than the actual and true weight, measure, or numerical count of any commodity, when, as buyer, he is permitted by the seller to determine the weight, measure, or numerical count thereof. No person shall charge or collect for any commodity or commodities a sum greater than the price or prices indicated or quoted at the time of sale. No person shall charge, collect, or accept any money for any commodity which he shall not have delivered or which he shall not have agreed to deliver. When a whole number or fraction, or both, are used in representing the price or quantity of any commodity, thing, or service offered or exposed for sale, such number or combination of numbers shall be of such size as to indicate clearly the price or quantity of such commodity, thing or service. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 7; Apr. 27, 1945, 59 Stat. 97, ch. 99, § 2; 1973 Ed., § 10-107.)

Lack of intent to cheat is no defense in a prosecution under this section. *Great Atl. & Pac. Tea Co. v. District of Columbia*, 89 F.2d 502 (D.C. Cir.), cert. denied, 301 U.S. 691, 57 S. Ct. 794, 81 L. Ed. 1347 (1937).

There is an implied representation of

weight by statement of price per pound and total cost. *Great Atl. & Pac. Tea Co. v. District of Columbia*, 89 F.2d 502 (D.C. Cir.), cert. denied, 301 U.S. 691, 57 S. Ct. 794, 81 L. Ed. 1347 (1937).

§ 10-109. Commodities sold by weight; “ton” defined.

When any commodity is sold by weight it shall be net weight. When any commodity is sold by the ton, it shall be understood to mean 2,000 pounds avoirdupois. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 8; Mar. 31, 1945, 59 Stat. 45, ch. 46, § 1; 1973 Ed., § 10-108.)

§ 10-110. Vending machines.

No person, firm, or corporation shall erect, operate, or maintain, or cause to be erected, operated, or maintained within the District of Columbia any coin-in-the-slot machine or automatic vending device without placing in charge thereof some responsible person. No such machine shall be maintained for use when the same is not in perfect working order, and the person in charge as well as the owner of such machine or device shall be held responsible for operating or maintaining any such machine or device which is not in perfect working order. A sign or placard shall be placed on every such machine or device in a conspicuous place and shall contain the name and business address of the owner and of the person in charge of such machine or device, and shall state that the person in charge of such machine or device will refund to any person money deposited by him for which the commodity or service promised expressly or impliedly has not been received, and such person shall so refund such money. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 9; 1973 Ed., § 10-109.)

§ 10-111. Sales tickets.

Every person, firm, or corporation shall, when a sales ticket is given with a purchase, cause such sales ticket to show the correct name and address of such person, firm, or corporation and the weight, measure, or numerical count, as the case may be, of each commodity sold to the purchaser, and every such person, firm, or corporation is hereby required to deliver such sales ticket to such purchaser when requested to do so by such purchaser at the time of sale. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 10; 1973 Ed., § 10-110.)

§ 10-112. Sale of coal, charcoal, or coke.

(a) It shall be unlawful to sell or offer for sale in the District of Columbia any coal, charcoal, or coke in any manner other than by weight. No person shall sell or deliver or attempt to deliver to any purchaser within the District of Columbia any coal, charcoal, or coke unless the quantity so sold or delivered or attempted to be delivered to each purchaser shall have been weighed separately. No person shall deliver to any purchaser within the District of Columbia any coal, charcoal, or coke unless the same shall have been kept separated from any other coal, charcoal, coke, or other commodity after same has been weighed as aforesaid until final delivery thereof.

(b) No person shall deliver or attempt to deliver any coal, charcoal, or coke in a quantity of one-fourth of a ton or more without accompanying the same by a delivery ticket and a duplicate thereof, the original of which shall be in ink or indelible substance, on each of which shall be clearly and distinctly expressed the following information:

(1) The gross weight of the load, the tare weight of the delivery vehicle, and the net weight of the coal, charcoal, or coke expressed in pounds avoirdupois;

(2) The name of the owner and location of the scale on which the coal, charcoal, or coke shall have been weighed;

- (3) Name and address of the seller and of the purchaser; and
- (4) The name of the person who weighed said coal, charcoal, or coke.

(c) Upon demand of the Director or any of his assistants or inspectors upon the person in charge of the vehicle of delivery, the original of these tickets shall be surrendered to the official making such demand. The duplicate ticket shall be delivered to the purchaser of said coal, charcoal, or coke, or to his agent or representative, at the time of delivery of such coal, charcoal, or coke. Upon demand of the Director or any of his assistants or inspectors, or of the purchaser or intended purchaser, his agent, or representative, the person delivering such coal, charcoal, or coke shall convey the same forthwith to a public scale, owned and operated as hereinafter provided, or to any legally approved private scale in the District of Columbia, the owner of which may consent to its use, and shall permit the verifying of the weight, and after the delivery of such coal, charcoal, or coke shall return forthwith with the wagon, truck, or other vehicle used to the same scale and permit to be verified the weight of the wagon, truck or other vehicle.

(d) When coal, charcoal, or coke is sold in quantities of one-fourth ton or more, it shall be sold in quantities of one-fourth ton, one-half ton, 1 ton, or in multiples of a ton. When coal, charcoal, or coke is sold in quantities of less than one-fourth ton, it shall be weighed at the time of delivery or sold in packages containing 100 pounds, 50 pounds, 25 pounds, 15 pounds, or 10 pounds. No package of coal, charcoal, or coke shall be made for sale, kept for sale, offered for sale, exposed for sale, or sold unless it shall have distinctly and conspicuously printed on the outside thereof in plain bold-face type, not smaller than 36 point, the name of the commodity, the quantity of contents in pounds, and the name and address of the maker of said package. When coal, charcoal, or coke is sold and delivered in packages, no delivery ticket shall be required.

(e) No coal, charcoal, or coke shall be sold which contains at the time the weight is taken more water or other liquid substance than is due to the natural condition of the coal, charcoal, or coke.

(f) Every vendor of coal, charcoal, or coke shall cause his name and address to be distinctly and conspicuously displayed in letters and figures at least 4 inches high on both sides of every vehicle used by or for him for the sale or delivery of coal, charcoal, or coke. In case of an estate, the trustee, administrator, or executor, or other person in charge of the affairs of such estate shall be deemed to be the vendor. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 11; Apr. 27, 1945, 59 Stat. 97, ch. 99, § 3; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-111.)

Department of Weights, Measures and Markets abolished. — See note to § 10-101.

§ 10-113. Sale of ice.

It shall be unlawful to sell, within the District of Columbia, any ice in any manner other than by weight, such weight to be ascertained at the time of delivery of such ice, and every person, or in case of a firm, copartnership, or corporation, the person in charge of its business in the District of Columbia,

engaged in the sale of ice shall keep on each of his or its wagons or other vehicles used in the sale or delivery of ice, while in use, a scale suitable for weighing ice which has been tested and approved in accordance with the provisions of this chapter. Every scale used for weighing ice in making sales in quantities of 100 pounds or less shall have graduations of 1 pound or less. Scales used for weighing ice in making sales in quantities of more than 100 pounds may have graduations of 5 pounds or less. (Mar. 3, 1921, 41 Stat. 1220, ch. 118, § 12; 1973 Ed., § 10-112.)

§ 10-114. Sale of bread.

(a) The word "bread" when used in the name of the food means the unit weighs 8 ounces or more after cooling, and any bread exposed for sale or sold in the District of Columbia shall have the net weight of the contents indicated by printing or marking the net weight on the label, wrapper, or container.

(b) Nothing herein shall apply to crackers, pretzels, buns, rolls, scones, or loaves of fancy bread weighing less than one-fourth pound avoirdupois, or what is commonly known as stale bread, provided the seller shall, at the time the sale is made, expressly state to the buyer that the bread sold is stale bread.

(c) Any loaf of bread weighing within 10 per centum in excess or within 4 per centum less than standard weight shall be deemed of legal weight. (Mar. 3, 1921, 41 Stat. 1220, ch. 118, § 13; Aug. 24, 1921, 42 Stat. 201, ch. 92; 1973 Ed., § 10-113; Oct. 8, 1983, D.C. Law 5-33, § 2, 30 DCR 4022.)

Legislative history of Law 5-33. — Law 5-33, the "Weights and Measures, and Markets Act Amendment Act of 1983," was introduced in Council and assigned Bill No. 5-178, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on

first and second readings on June 28, 1983 and July 12, 1983, respectively. Signed by the Mayor on July 21, 1983, it was assigned Act No. 5-55 and transmitted to both Houses of Congress for its review.

§ 10-115. Sale of frozen and fluid dairy products.

(a) All fluid and frozen dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, buttermilk, chocolate milk, chocolate drink, ice cream, and frozen custard, and frozen dairy desserts such as sherbet, water ice, and ice milk, shall, when sold or offered for sale in package form, be packaged only in units of gallons, one and one-half gallons, two and one-half gallons, integral multiples of the gallon, or binary-submultiples of the gallon of not less than 1 fluid ounce. Packages of less than 1 fluid ounce shall be permitted if the net contents of each such package are clearly and permanently marked thereon and if the labeling of the package conforms with the requirements of this chapter or such package be 1 of a number of identical packages in an outside container the total contents and labeling of which conform with the requirements of this chapter. Notwithstanding the foregoing, frozen dairy products and frozen dairy desserts may be sold or offered for sale in individually packaged or wrapped portions each containing 4 or more but less than 16 fluid ounces, in integral multiples of 1 ounce, or, if less than 4 ounces, in multiples of one-half ounce. The package or wrapper of each individual portion of any such frozen dairy product or frozen

dairy dessert shall be clearly labeled to show the net contents in fluid ounces. When 2 or more such individual portions of a frozen dairy product or frozen dairy dessert are sold or offered for sale in an outside container, the exterior of such container shall be clearly labeled to show the number of individual portions contained therein and the total net contents of such container, in fluid ounces.

(b) Bottles or containers used for the retail sale of milk, buttermilk, chocolate milk, chocolate drink, or cream shall have clearly blown or otherwise permanently marked in the side of each bottle or container, or printed on the cap or stopple thereof, the name and address of the person, firm, or corporation who or which bottled such milk, buttermilk, chocolate milk, chocolate drink, or cream and the capacity of such bottle or container, except that a package containing less than 1 fluid ounce need not be labeled as to quantity if such package be 1 of a number of identical packages in an outside container the total contents and labeling of which conform with the requirements of this chapter. (Mar. 3, 1921, 41 Stat. 1221, ch. 118, § 14; Apr. 27, 1945, 59 Stat. 98, ch. 99, § 4; Aug. 7, 1964, 78 Stat. 382, Pub. L. 88-405, § 1; 1973 Ed., § 10-114.)

Cross references. — As to sale of milk, cream, and ice cream, see Chapter 3 of Title 33. As to registration of trademark, see Chapters 2 and 3 of Title 48.

§ 10-116. Standard containers for sale of fruits, vegetables, and other dry commodities; no sales except in standard containers or by weight or count.

(a) Standard containers for the sale of fruits, vegetables, and other dry commodities in the District of Columbia shall be as follows:

(1) Standard barrel for fruits, vegetables, and other dry commodities other than cranberries, shall be of the following dimensions when measured without distention of its parts: Length of stave, twenty-eight and one-half inches; diameter of heads, seventeen and one-eighth inches; distance between heads, 26 inches; circumference of bulge, 64 inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch: Provided, that any barrel of a different form having a capacity of 7,056 cubic inches shall be a standard barrel. The standard barrel for cranberries shall be of the following dimensions when measured without distention of its parts: Length of staves, twenty-eight and one-half inches; diameter of head, sixteen and one-fourth inches; distance between heads, twenty-five and one-fourth inches; circumference of bulge, fifty-eight and one-half inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch. It shall be unlawful to sell, offer, or expose for sale in the District of Columbia a barrel containing fruits or vegetables or any other dry commodity of less capacity than the standard barrels defined in this section, or subdivisions thereof known as the 3rd, half, and three-quarter barrel.

(2)(A) Standards for climax baskets for grapes and other fruits and vegetables shall be the 2-quart basket, 4-quart basket, and 12-quart basket, respectively.

(B) The standard 2-quart climax basket shall be of the following dimensions: Length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length 11 inches and width 5 inches, outside measurement. Basket to have a cover 5 by 11 inches, when a cover is used.

(C) The standard 4-quart climax basket shall be of the following dimensions: Length of bottom piece, 12 inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length 14 inches; width six and one-fourth inches, outside measurement. Basket to have cover six and one-fourth inches by 14 inches, when cover is used.

(D) The standard 12-quart climax basket shall be of the following dimensions: Length of bottom piece, 16 inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch; height of basket, seven and one-sixteenth inches, outside measurement; top of basket, length 19 inches, width 9 inches, outside measurement. Basket to have cover 9 inches by 19 inches, when cover is used.

(3) The 6-basket carrier crate for fruits and vegetables shall contain 6 4-quart baskets, each basket having a capacity of two hundred and sixty-eight and eight-tenths cubic inches.

(4) The 4-basket flat crate for fruits and vegetables shall contain 4 3-quart baskets, each basket having a capacity of two hundred and one and six-tenths cubic inches.

(5) The standard box, basket, or other container for berries, cherries, shelled peas, shelled beans, and other fruits and vegetables of similar size shall be of the following capacities standard dry measure: One-half pint, pint, and quart. The one-half pint shall contain sixteen and eight-tenths cubic inches; the pint shall contain thirty-three and six-tenths cubic inches; the quart shall contain sixty-seven and two-tenths cubic inches.

(6)(A) Standard lug boxes for fruits and vegetables shall be the one-half bushel box and the 1-bushel box.

(B) The one-half bushel lug box shall be of the following inside dimensions: Length, 17 inches; width, ten and five-tenths inches; depth, 6 inches.

(C) The 1-bushel lug box shall be of the following inside dimensions: Length, twenty and three-fourths inches; width, 13 inches; depth, 8 inches; and no lug box of other than the foregoing dimensions shall be used in the District of Columbia.

(7)(A) The standard hampers for fruits and vegetables shall be the 1-peck hamper, one-half bushel-hamper, 1-bushel hamper, and one and one-half-bushel hamper.

(B) The 1-peck hamper shall contain five hundred and thirty-seven and six-tenths cubic inches; the one-half-bushel hamper shall contain one thousand and seventy-five and twenty-one one-hundredths cubic inches. The 1-bushel hamper shall contain two thousand one hundred and fifty and forty-two one-hundredths cubic inches, and the one and one-half-bushel

hamper shall contain three thousand two hundred and twenty-five and sixty-three one-hundredths cubic inches.

(8)(A) The standard round-stave baskets for fruits and vegetables shall be the one-half-bushel basket, 1-bushel basket, one and one-half-bushel basket, and 2-bushel basket.

(B) The one-half-bushel basket shall contain one thousand and seventy-five and twenty-one one-hundredths cubic inches. The 1-bushel basket shall contain two thousand one hundred and fifty and forty-two one-hundredths cubic inches. The one and one-half-bushel basket shall contain three thousand two hundred and twenty-five and sixty-three one-hundredths cubic inches, and the 2-bushel basket shall contain four thousand three hundred and eighty-four one-hundredths cubic inches.

(9) The standard apple box shall contain two thousand one hundred and seventy-three and five-tenths cubic inches and be of the following inside dimensions: Length, 18 inches; width, eleven and one-half inches; depth, ten and one-half inches.

(10) The standard pear box shall be of the following inside dimensions: Length, 18 inches; width, eleven and one-half inches; depth, eight and one-half inches.

(11) The standard onion crate shall be of the following inside dimensions: Length, nineteen and five-eighths inches; width, eleven and three-sixteenths inches; depth, nine and thirteen-sixteenths inches.

(b) No person shall sell, offer, or expose for sale in the District of Columbia any fruits, vegetables, grain, or similar commodities in any manner except in the standard containers herein prescribed or by weight or numerical count; and no person shall sell, offer, or expose for sale, except by weight or numerical count, in the District of Columbia any commodity in any container herein prescribed which does not contain, at the time of such offer, exposure, or sale, the full capacity of such commodity compactly filled: Provided, that fresh beets, onions, turnips, rhubarb, and other similar vegetables, usually and customarily sold by the bunch, may be sold by the bunch.

(c) All kale, spinach, and other similar leaf vegetables shall be sold at retail by net weight. (Mar. 3, 1921, 41 Stat. 1221, ch. 118, § 15; 1973 Ed., § 10-115.)

§ 10-117. Substitutes for dry measure prohibited.

Nothing in this chapter contained shall be construed as permitting the use as a dry measure or substituting for a dry measure any of the following containers: Barrels, boxes, lug boxes, crates, hampers, baskets, or climax baskets; and the use of any such container as a measure is hereby expressly prohibited, and the user shall be fined or imprisoned as herein provided for other violations of this chapter. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 16; 1973 Ed., § 10-116.)

§ 10-118. Quantity markings required for packages; exemption.

No person shall sell, offer, or expose for sale in the District of Columbia any food in package form unless the quantity of contents is plainly and conspicu-

ously marked on the outside of each package in terms of weight, measure, or numerical count. The Council of the District of Columbia is authorized to establish and allow reasonable variation, tolerances, and exemptions as to small packages. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 16½; 1973 Ed., § 10-117.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(195) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 10-119. Sale of wood.

A cord of wood shall contain 128 cubic feet. Wood more than 8 inches in length shall be sold by the cord or fractional part thereof, and when delivered shall contain 128 cubic feet per cord when evenly and compactly stacked. Split wood, 8 inches or less in length, may be sold by such standard loads as shall be fixed by the Council of the District of Columbia. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 17; 1973 Ed., § 10-118.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(196) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 10-120. Standard liquid measures; automatic gasoline pumps.

The standard liquid gallon shall contain 231 cubic inches; the half gallon, one hundred and fifteen and five-tenths cubic inches; the quart, fifty-seven and seventy-five hundredths cubic inches; the pint, twenty-eight and eight hundred and seventy-five thousandths cubic inches; the half pint, fourteen and four hundred and thirty-seven thousandths cubic inches; the gill, seven and two hundred and eighteen thousandths cubic inches; the fluid ounce, one and eight-tenths cubic inches; and no liquid measure of other than the foregoing capacities, except multiples of the gallon, shall be deemed legal liquid measure in the District of Columbia: Provided, that any automatic pump for the

measurement of gasoline shall have graduations of fractional parts of a gallon in terms of either decimal or binary-submultiple subdivisions. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, §§ 18, 18a; July 7, 1932, 47 Stat. 609, ch. 442; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; Aug. 7, 1964, 78 Stat. 382, Pub. L. 88-405, § 2; 1973 Ed., § 10-119.)

§ 10-121. Sale of shucked oysters, fish, meat, butter, and cheese.

Shucked oysters shall be sold only by liquid measure or numerical count, and whenever there is included in the sale by measure of shucked oysters more than 10 per centum of oyster liquid or other liquid substance, the vendor shall be deemed guilty of selling short measure. All fish, meat, poultry, meat products, lard, lard substitutes, butter, butter substitutes, and cheese shall be sold by avoirdupois weight. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 19; Apr. 27, 1945, 59 Stat. 99, ch. 99, § 6; 1973 Ed., § 10-120.)

§ 10-122. "Barrel of corn" defined.

Three hundred and fifty pounds of corn on the cob shall constitute a barrel and 280 pounds of shelled corn shall constitute a barrel: Provided, that nothing in this section shall be held to prohibit the sale of corn on the cob by the barrel. (Mar. 3, 1899, 30 Stat. 1346, ch. 432, § 2; 1973 Ed., § 10-121.)

§ 10-123. Automatic measuring pumps.

Every user of an automatic measuring pump or similar device, shall, when the supply of the commodity which he is measuring for sale with such pump or similar device, is insufficient to deliver correct measure of such commodity by the usual or customary method of operating such pump or device or when, for any cause whatever, such pump or device does not, by the usual or customary method of operating same, deliver correct measure, place a sign with the words, "Out of use" in a conspicuous place on such pump or device where it may readily be seen, and shall forthwith cease to use the same until his supply of such commodity is replenished or until such pump or device is repaired, adjusted, or otherwise put in condition to deliver correct measure. All automatic measuring pumps or other similar measuring devices in use shall be subject to inspection, and approval or condemnation, whether used for measuring or not. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 20; 1973 Ed., § 10-122.)

§ 10-124. Sale of pro rata quantity.

Whenever any commodity is offered for sale at a stated price for a stated quantity, a smaller quantity shall be sold at a pro rata price unless the purchaser is informed to the contrary at the time of sale. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 21; 1973 Ed., § 10-123.)

§ 10-125. Inspection of commodities by Director.

The Director, or under his direction, his assistants and inspectors, shall from time to time weigh or measure and inspect packages or amounts of commodities of whatever kind kept for sale, offered or exposed for sale, sold, or in the process of delivery, in order to determine whether or not the same are kept for sale, offered for sale, or sold in accordance with the provisions of this chapter, and no person shall refuse to permit such weighing, measuring, or inspection whenever demanded by the Director or any of his assistants or inspectors. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 22; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-124.)

Department of Weights, Measures and Markets abolished. — See note to § 10-101.

§ 10-126. Sale of food by false advertising.

The Director of Weights, Measures, and Markets is further authorized to make purchases of food in connection with the investigation and detection of sales of food by misrepresentation or false advertising in violation of §§ 22-1411 to 22-1413; and there are authorized to be appropriated annually such sums as may be necessary for carrying out the purposes of this section. (Mar. 3, 1921, ch. 118, § 22½; Apr. 27, 1945, 59 Stat. 99, ch. 99, § 5; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-124a.)

Department of Weights, Measures and Markets abolished. — See note to § 10-101.

§ 10-127. Sale of measuring devices by Director prohibited.

It shall be unlawful for the Director or any employee of his office to vend any weights, measures, weighing or measuring device, or to offer or expose the same for sale, or to be interested, directly or indirectly, in the sale of same. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 23; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-125.)

Department of Weights, Measures and Markets abolished. — See note to § 10-101.

§ 10-128. Police power conferred upon Director; inspections without warrants.

There is hereby conferred upon the Director, his assistants and inspectors, police power, and in the exercise of their duties they shall, upon demand, exhibit their badges to any person questioning their authority; and they are authorized and empowered to make arrests of any person violating any of the provisions of this chapter. The Director, his assistants, and inspectors may, for the purpose of carrying out and enforcing the provisions of this chapter and in the performance of their official duties, with or without formal warrant, enter

or go into or upon any stand, place, building, or premises, except a private residence, and may stop any vendor, peddler, dealer, vehicle, or person in charge thereof for the purpose of making inspections or tests. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 24; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-126.)

Cross references. — As to warrants and arrests, see Chapter 5 of Title 23.

Department of Weights, Measures and Markets abolished. — See note to § 10-101.

§ 10-129. Council may establish tolerances and specifications.

The Council of the District of Columbia is hereby authorized and empowered to establish tolerances and specifications for scales, weights, measures, weighing or measuring instruments or devices, and containers used in the District of Columbia. The Council shall prescribe and allow for barrels, containers, and packages, provided for in this chapter the same specifications, variations, or tolerances that have been prescribed or established, or that may hereafter be prescribed or established for like barrels, containers, or packages by any officer of the United States in accordance with any requirement of an act of Congress. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 25; 1973 Ed., § 10-127.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(197) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 10-130. Weighmasters; public scales; fees.

The Mayor is authorized to appoint public weighmasters and grant licenses for the location of public scales in the District of Columbia under such regulations as the Council of the District of Columbia may prescribe, and authorize such weighmasters to charge such fees as the Council may approve and fix in advance, and may grant permits, revocable on 30 days' notice, for the location of such public scales on public space under their control. No person other than a duly appointed and qualified public weighmaster shall do public weighing or make any charge or accept any compensation therefor. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 26; 1973 Ed., § 10-128.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(198) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 10-131. Powers and duties of Director conferred on assistants and inspectors.

The powers and duties granted to and imposed on the Director by this chapter, are also hereby granted to and imposed on his assistants and inspectors when acting under his instructions. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 27; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-129.)

Department of Weights, Measures and Markets abolished. — See note to § 10-101.

§ 10-132. Supervision of markets; investigations and reports.

The Council of the District of Columbia is authorized and empowered to make such regulations as may be necessary for the control, regulation, and supervision of all markets owned by the District of Columbia and the Director, under the direction of the Mayor, shall have supervision of all produce and other markets owned by the District of Columbia, shall enforce such regulations regarding the operation of the same as the Council may make, shall make such investigations regarding the sale, distribution, or prices of commodities in the District of Columbia as the Mayor may direct, and shall make reports and recommendations in connection therewith. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 28; Apr. 27, 1945, 59 Stat. 99, ch. 99, § 7; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-130.)

Cross references. — As to rules and regulations, see § 1-319.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(199) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Department of Weights, Measures and Markets abolished. — See note to § 10-101.

§ 10-133. “Mayor” and “Director” defined.

Wherever the word “Mayor” is used in this chapter, it shall be construed to mean the Mayor of the District of Columbia. Whenever the word “Director” is used in this chapter, it shall be construed to mean the Director of Weights, Measures, and Markets. (Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 29; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; 1973 Ed., § 10-131.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Department of Weights, Measures and Markets abolished. — See note to § 10-101.

§ 10-134. “Person” defined; meaning of singular words.

The word “person,” as used in this chapter, shall be construed to include copartnerships, companies, corporations, societies, and associations. Whenever any word in this chapter, is used in the singular, it shall be construed to mean either singular or plural, and wherever any word in this chapter is used in the plural, it shall be construed to mean either plural or singular, as the circumstances demand. (Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 30; 1973 Ed., § 10-132.)

§ 10-135. Severability.

Each section of this chapter, and every provision of each section, is hereby declared to be an independent section or provision, and the holding of any section or provision of any section to be void, ineffective, or unconstitutional for any cause whatever shall not be deemed to affect any other section or provision thereof. (Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 31; 1973 Ed., § 10-133.)

§ 10-136. Penalties; conduct of prosecutions.

Any person violating any of the provisions of this chapter shall be punished by a fine not to exceed \$500, or by both such fine and imprisonment not to exceed 6 months. All prosecutions under this chapter shall be instituted by the Corporation Counsel or one of his assistants in the Superior Court of the District of Columbia. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 32; Apr. 1, 1942,

56 Stat. 190, ch 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 10-134; Oct. 5, 1985, D.C. Law 6-42, § 463, 32 DCR 4450.)

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed

by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Lack of intent to cheat is no defense in a prosecution for violation of § 10-108. *Great Atl. & Pac. Tea Co. v. District of Columbia*, 89 F.2d 502 (D.C. Cir.), cert. denied, 301 U.S. 691, 57 S. Ct. 794, 81 L. Ed. 1347 (1937).

§ 10-137. Supervision of municipal fish market.

The Mayor of the District of Columbia is authorized and directed in the name of the District of Columbia to exclusively control, regulate, and operate as a municipal fish wharf and market, the water frontage on the Potomac River lying south of Water Street, between 11th and 12th Streets, including the buildings and wharves thereon, and said wharf shall constitute the sole wharf for the landing of fish and oysters for sale in the District of Columbia; and said Mayor shall have power to make leases, fix and determine rentals, wharfage and dockage fees, and to collect and pay the same into the treasury of the United States to the credit of the General Fund of the District of Columbia; and the Council of the District of Columbia to make and amend, from time to time, all such regulations as it may deem proper for the control, regulation, and operation of said municipal fish wharf and market. (Mar. 19, 1906, 34 Stat. 72, ch. 958; Mar. 4, 1913, 37 Stat. 941, ch. 150; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; 1973 Ed., § 10-135.)

Cross references. — As to rules and regulations, see § 1-319.

As to control and rental of wharves, see §§ 9-101 and 9-102.

As to harbor regulations, see §§ 22-1701 to 22-1703.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(200) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 10-138. Markets; disposition of receipts; charges.

On and after July 1, 1906, all receipts of the Wholesale Producers' Market, including the receipts for the occupation of the south side of B Street northwest, and the Farmers' Street Markets adjacent to the Eastern, Western and Georgetown Markets, respectively, shall be paid to the Director of the Department of Finance and Revenue, to the credit of the revenues of the

District, weekly. There is hereby authorized for the use of space at the above-mentioned street markets a space charge of \$1 per day for each space occupied for rent. The market masters of the several markets herein mentioned shall make collections daily and make a return thereof, with a sworn statement, weekly to the sealer of weights and measures, who shall deposit the same with the Mayor to the credit of the revenues of the District of Columbia.

The Mayor of the District of Columbia shall amend by rule from time to time the charge imposed for the use of space at the street markets mentioned in this section. (June 27, 1906, 34 Stat. 485, ch. 3553; Mar. 4, 1913, 37 Stat. 940, ch. 150; Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 33; 1973 Ed., § 10-136; Nov. 15, 1983, D.C. Law 5-39, § 2, 30 DCR 4991.)

Cross references. — As to disposition of fees, see § 47-127.

Legislative history of Law 5-39. — Law 5-39, the "Farmers' Street Market Space Charge Increase Act of 1983," was introduced in Council and assigned Bill No. 5-97, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on July 5, 1983 and September 6, 1983, respectively. Signed by the Mayor on September 22, 1983, it was assigned Act No. 5-64 and transmitted to both Houses of Congress for its review.

Effective date. — Section 3 of D.C. Law 5-39 provided that § 2 of the act shall take effect 30 days following November 15, 1983.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided

for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

CHAPTER 2. RETAIL SERVICE STATIONS.

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Subchapter I. Definitions.

§ 10-201. Definitions.

For the purpose of this chapter, the following words, terms, phrases, and their derivations shall have the meanings respectively ascribed to them in this section unless the context clearly indicates otherwise:

(1) "Automotive product" means any product or item of merchandise, including any tire, battery, or similar motor vehicle accessory or part, other than motor fuels or petroleum products, which is intended to be or is capable of being used with, in, or on a motor vehicle, whether or not such product is essential for the proper operation and maintenance of a motor vehicle and whether or not such product is also suitable or is actually sold or used for non-motor vehicle purposes.

(2) "Distributor" means any person who is engaged in the business of selling, supplying, or distributing on consignment or otherwise, motor fuels or petroleum products to or through retail service stations which it owns, leases, or otherwise controls and who also maintains a marketing agreement with a retail dealer for the sale or distribution of motor fuels or petroleum products to a retail service station, whether or not such distributor owns, leases, or otherwise controls such retail service station.

(3) "Engaging in the retail sale of motor fuel" means that at least 30 per centum of the retail dealer's gross revenue, excluding such revenue as is derived from the retail sale of petroleum products and automotive products and from the repair, maintenance, and servicing of motor vehicles, is derived from the retail sale of motor fuel.

(4) "Equipment" means any movable tangible personal property which is used in the business of operating a retail service station, other than property which is either consumed in the business, except through depreciation or amortization, or held for immediate or ultimate sale to customers. The term

“equipment” also includes any motor fuel dispensing pump, lift, storage tank, machine, appliance or other similar property which was movable tangible personal property at the time such property was purchased, leased, or otherwise acquired by the operator of a retail service station, whether or not such property was subsequently attached or affixed to any real property.

(5) “Failure to renew” means any exercise of a right or power created by the marketing agreement or by law to terminate, cancel, or otherwise put an end to a marketing agreement at the expiration of its term, including the exercise of a right or power to put an end to a marketing agreement which would otherwise be extended or renewed automatically for a definite or indefinite term and any failure to extend or renew a marketing agreement which does not provide for automatic extension or renewal. The term “failure to renew” shall also include any termination or cancellation of a marketing agreement which does not specify an expiration date or term.

(6) “Goodwill” means the tendency or habit of customers to return for trade to the retail service station with which they have been previously dealing and includes, with respect to the value of a retail dealer’s goodwill, whatever value, advantage, or benefit is added to the value of a retail service station business as a result of the efforts of the retail dealer and his employees during the term or terms of a marketing agreement with the distributor, and of any preceding marketing agreements between the same parties, including, but not limited to, whatever value, advantage, or benefit is added by the reputation of the retail dealer and his employees for competence, skill, quality, ability, reliability, punctuality, personal attention, honesty, integrity, fair dealing, reasonable prices, and other attributes in providing motor fuels, petroleum products, and automotive products and in providing motor vehicle repair, maintenance, and other services, over and above the value of any inventory, equipment, real estate, and other tangible property, of a trademark owned, leased, or otherwise controlled by the distributor, or of advertising or other promotions furnished or financed, in whole or part, by the distributor, which value, advantage, or benefit can reasonably be expected to remain at the retail service station location after the departure of the retail dealer. In determining the value of a retail dealer’s goodwill, any increase in the volume of motor fuel, petroleum product, and automotive product sales, any increase in the volume of repair, maintenance, and other services provided, any increase in the number of customers, any financial or other contributions to advertising or promotions by the retail dealer, the number of years the retail dealer has operated the retail service station, and other similar factors should be taken into account in light of all other factors and circumstances.

(7) “Marketing agreement” means any written agreement, or combination of agreements, including any contract, lease, franchise, or other agreement, which is entered into between a distributor and a retail dealer and pursuant to which:

(A) The distributor agrees to sell, supply, or distribute motor fuel to the retail dealer for the purpose of engaging in the retail sale of such motor fuel at a retail service station; and

(B) The retail dealer is granted the right, privilege, or authority, in addition to whatever else may be provided, to:

(i) Use any trademark owned, leased, or otherwise controlled by the distributor for the purpose of engaging in the retail sale of motor fuel at a retail service station; or

(ii) Occupy a retail service station owned, leased, or otherwise controlled by the distributor for the purpose of engaging in the retail sale of motor fuel.

(8) "Merchantable product" means any product which is in such a condition that it is reasonably resalable in the normal course of the operation of a retail service station business at a price normally charged for a new or unused product.

(9) "Motor fuel" means any gasoline, diesel fuel, special fuel, petroleum distillate, refined petroleum product, natural petroleum liquid product, natural gas liquified product, crude oil product, or other substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running any internal combustion engine of a motor vehicle and which is sold or used, alone or blended or compounded with other substances, by any person for such purpose.

(10) "Person" means any natural person, firm, association, business trust, trust, estate, partnership, corporation, 2 or more persons having a common or joint interest, or other legal or commercial entity. In the case of an entity, the term "person" shall also include any other entity which is a parent company of the entity; has, directly or indirectly, 30 per centum or more voting control over the entity; manages or effectively controls the entity, other than through a contractual relationship; or is under common control with the entity. In addition, in the case of an entity, the term "person" shall also include any other entity which is a subsidiary or affiliate of the entity; over which the entity has, directly or indirectly, 30 per centum or more voting control; or which is managed or effectively controlled by the entity, other than through a contractual relationship.

(11) "Petroleum product" means any oil, crude oil, residual fuel oil, grease, lubricant, petroleum distillate, refined petroleum product, natural petroleum product, natural gas product, crude oil product, or similar product, other than motor fuels, which is intended to be or is capable of being used with, in, or on a motor vehicle, whether or not such product is essential for the proper operation and maintenance of a motor vehicle and whether or not such product is also suitable or is actually sold or used for non-motor vehicle purposes.

(12) "Refiner, producer, or manufacturer" means any person who is engaged in the business of manufacturing, producing, refining, distilling, blending, or compounding motor fuels, petroleum products, or precursors of motor fuels or petroleum products, which are ultimately sold, supplied, or distributed to retail service stations in the District of Columbia by such person or any other person, whether or not such manufacturing, producing, refining, distilling, blending, or compounding is performed by such person within the District of Columbia, or who is engaged in the business of importing motor fuels or petroleum products.

(13) "Retail dealer" means any person, other than an employee of a distributor, who owns, leases, operates, or otherwise controls a retail service

station for the purpose of engaging in the retail sale of motor fuel and who also maintains a marketing agreement with a distributor.

(14) "Retail sale" means the sale of any tangible personal property to the public for any purpose other than for the resale of the property in the form in which it is sold or for the use or incorporation of the property sold as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining.

(15) "Retail service station" means any fixed geographic location, including the real estate and permanent improvements thereon, which is operated for the purpose of storing and selling motor fuel at retail and which has a dispensing system for delivery of motor fuel into the service tanks of motor vehicles, whether or not such location is also operated for the purposes of selling petroleum products, automotive products, or other products at retail or of repairing, maintaining, or servicing motor vehicles.

(16) "Selling, sell, or sale" means selling, offering for sale, keeping for sale, exposing for sale, advertising for sale, trafficking in, bartering, peddling, or any other transfer, exchange, or delivery in any manner or by any means other than purely gratuitously.

(17) "Trademark" means any trademark, tradename, service mark, brandname, or other identifying mark, symbol, or name, including any identifying mark, symbol, or name associated with any motor fuel.

(18) "Wholesaler" means any person, including any distributor, who is engaged in the business of selling, supplying, or distributing motor fuels or petroleum products to retail service stations in the District of Columbia. (1973 Ed., § 10-201; Apr. 19, 1977, D.C. Law 1-123, § 2, 24 DCR 2371.)

Section references. — This section is referred to in § 10-212.

Legislative history of Law 1-123. — Law 1-123, the "Retail Service Station Act of 1976," was introduced in Council and assigned Bill No. 1-333, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 23, 1976 and December 7, 1976, respectively. Enacted without signature by the Mayor on January 18, 1977, it was assigned Act No. 1-220 and transmitted to both Houses of Congress for its review.

Preemption by federal Petroleum Marketing Practices Act. — Federal Petroleum

Marketing Practices Act (15 U.S.C. §§ 2801 to 2841) preempts only those provisions of D.C.'s Retail Service Stations Act which address termination and renewal of franchises, or the notice required with respect to these practices; any RSSA provision that regulates some other aspect of franchise relationship is preempted under an implied preemption doctrine only insofar as the RSSA provision stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the federal PMPA. *Davis v. Gulf Oil Corp.*, App. D.C., 485 A.2d 160 (1984).

Cited in *Dege v. Milford*, App. D.C., 574 A.2d 288 (1990).

Subchapter II. Operation of Retail Service Stations.

§ 10-211. Registration of intent to sell.

(a) Notwithstanding anything contained in § 47-2814, all refiners, producers, manufacturers, marketers, wholesalers, distributors, suppliers, jobbers, resellers, retailers, retail dealers, or sellers of motor fuels, including any operator of a retail service station, shall, before selling, supplying, or distributing any motor fuels which may ultimately be used for the purpose of

propelling or running any motor vehicle and annually thereafter by May 1, file with the Mayor a written declaration that they desire or intend to sell, supply, or distribute motor fuels in the District of Columbia. The declaration shall be filed on such form or forms and in such manner as may be prescribed by the Mayor and shall include, in addition to such other information as the Mayor shall require, a listing of the types and grades of the motor fuels and petroleum products that such person wishes or intends to sell, supply, or distribute; any trademark or trademarks associated therewith; a listing of the names and addresses of the suppliers thereof; a listing of the names and addresses of the persons to whom such motor fuels or petroleum products are or will be sold, supplied, or distributed; and a description, including the location, of any proposed or existing facilities and equipment such person will utilize in his business for all drive-in retail service stations, excluding car agencies, parking garages, and operations. This would include gas only self-service islands, gas only mixed service islands, gas only full service islands and gas with automotive repair services. It shall be a violation of this subchapter for any person to sell, supply, or distribute any motor fuel to any person in the District of Columbia, by himself or by his employee, servant, or agent, or as the employee, servant, or agent of any other person, or to have any motor fuel in his custody or possession with intent to sell, supply, or distribute such motor fuel, without having first filed a current valid declaration with the Mayor, provided that any person who is engaged in the business of selling, supplying, or distributing motor fuel in the District of Columbia on April 19, 1977, may continue such business for not more than 30 days after April 19, 1977, without filing a declaration.

(b) Whenever a person intends to discontinue the business of selling, supplying, or distributing motor fuel in the District of Columbia, whether through a sale or transfer of the business or otherwise, such person shall notify the Mayor in writing of such discontinuance at least 10 days prior to the date that such discontinuance will take effect. Such notice shall give the date of the discontinuance, the reason for such discontinuance, and, in the event of a sale or transfer of the business, the effective date thereof and the name and address of the purchaser or transferee thereof. (1973 Ed., § 10-211; Apr. 19, 1977, D.C. Law 1-123, § 3-101, 24 DCR 2371; Dec. 29, 1979, D.C. Law 3-44, § 2(b), 26 DCR 2093.)

Section references. — This section is referred to in §§ 10-214 and 10-215.

Legislative history of Law 1-123. — See note to § 10-201.

Legislative history of Law 3-44. — Law 3-44, the "Moratorium on Retail Service Station Conversion Act of 1979," was introduced in Council and assigned Bill No. 3-152, which was

referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on September 25, 1979 and October 9, 1979, respectively. Signed by the Mayor on November 2, 1979, it was assigned Act No. 3-118 and transmitted to both Houses of Congress for its review.

§ 10-212. Restrictions on operation.

(a) After April 19, 1977, no producer, refiner, or manufacturer of motor fuels as the terms are defined in § 10-201(10) and (12) shall open a retail service station in the District of Columbia, irrespective of whether or not such retail

service station will be operated under a trademark owned, leased, or otherwise controlled by such producer, refiner, or manufacturer, unless such retail service station is to be operated by a person or entity other than either an employee, servant, commissioned agent or subsidiary of such producer, refiner, or manufacturer or a person or entity who operates or manages such retail service station under a contract with such producer, refiner, or manufacturer which provides for a fee arrangement.

(b) After January 1, 1981, no producer, refiner, or manufacturer of motor fuels as the terms are defined in § 10-201(10) and (12) shall operate a retail service station in the District of Columbia, irrespective of whether or not such retail service station will be operated under a trademark owned, leased, or otherwise controlled by such producer, refiner, or manufacturer, with employees, servants, commissioned agents, or subsidiaries of such producer, refiner, or manufacturer or with a person or entity who operates or manages such retail service station under a contract with such producer, refiner, or manufacturer which provides for a fee arrangement. However, any entity, which as of October 9, 1979, operates a retail service station in the District of Columbia, and of which a producer, refiner, or manufacturer as defined in § 10-201(12) only has no more than 49 per centum voting control, may continue to operate such station after January 1, 1981, so long as no producer, refiner or manufacturer as defined in § 10-201(12) only has more than 49 per centum voting control of the entity. (1973 Ed., § 10-212; Apr. 19, 1977, D.C. Law 1-123, § 3-102, 24 DCR 2371; Dec. 29, 1979, D.C. Law 3-44, § 2(a), 26 DCR 2093.)

Cross references. — As to application for alcoholic beverage license, see § 25-115.

Section references. — This section is referred to in §§ 10-214 and 10-215.

Legislative history of Law 1-123. — See note to § 10-201.

Legislative history of Law 3-44. — See note to § 10-211.

§ 10-213. Nondiscrimination required of wholesalers.

(a) Every wholesaler shall extend all voluntary allowances, including, but not limited to, any temporary or permanent price reduction, price allowance, price adjustment, special sale, deal, discount, inducement, incentive, rent rebate, rent abatement, rent relief, premium or other allowance, uniformly, on an equitable basis, to every retail service station served. In the event that an exceptional or undue hardship has been imposed on a specific retail service station by the occurrence or existence of special or unusual circumstances, including, but not limited to, loss by fire or a temporary road closing, a nonuniformly extended voluntary allowance may be extended to such retail service station.

(b) Every wholesaler shall apply all equipment rental charges for equipment of a comparable age, condition, grade, or quality uniformly, on an equitable basis, to every retail service station served.

(c) Every wholesaler shall, during periods of shortage affecting such wholesaler, apportion uniformly all motor fuels, including all grades of motor fuel, and all petroleum products affected by such shortage, on an equitable basis, to every retail service station served. No wholesaler shall unreasonably discriminate between retail service stations in their allotments. For the purpose of

this subsection, a shortage shall exist when any wholesaler is unable or unwilling for any reason, on either a permanent or temporary basis, to sell, distribute, or supply any specific motor fuels or petroleum products to all retail service stations previously served in a quantity equivalent to that previously sold, distributed, or supplied to such retail service stations. (1973 Ed., § 10-213; Apr. 19, 1977, D.C. Law 1-123, § 3-103, 24 DCR 2371.)

Section references. — This section is referred to in § 10-215.

Legislative history of Law 1-123. — See note to § 10-201.

§ 10-214. Exemption from enforcement of § 10-212; regulations; reports.

(a) Upon finding that enforcement of § 10-212 would impose an exceptional or undue hardship upon any refiner, producer, or manufacturer as a result of the existence of special or unusual circumstances, the Mayor may grant permission to such producer, refiner, or manufacturer to temporarily operate a retail service station for a period of not longer than 90 days. Within 60 days following April 19, 1977, the Mayor shall promulgate rules and regulations specifying the special or unusual circumstances during which a producer, refiner, or manufacturer may temporarily operate a retail service station, including, but not limited to, the abandonment of a retail service station by a retail dealer, the termination of, cancellation of, or failure to renew a marketing agreement other than a wrongful or illegal termination, cancellation, or failure to renew, and other emergencies. Any producer, refiner, or manufacturer who desires the permission provided for in this subsection shall submit a written request for such permission to the Mayor, on such form or forms and in such manner as may be prescribed by the Mayor, prior to operating any retail service station. Such request shall include a statement of the special or unusual circumstances that exist and of the exceptional or undue hardship which would result from the enforcement of § 10-212. Nothing contained in this subsection shall be construed as authorizing any producer, refiner, or manufacturer to operate any retail service station in violation of this subchapter during the pendency of a request for permission to temporarily operate such retail service station.

(b) The Mayor may grant an exemption of not longer than 1 year to the divorcement date specified in § 10-212(b) to any producer, refiner, or manufacturer who is unable, after reasonable effort, to either sell, transfer, or otherwise dispose of any retail service station which he owns, leases, or otherwise controls or enter into a satisfactory marketing agreement or lease with a qualified retail dealer or other person who is authorized to operate such retail service station under § 10-212.

(c) The Mayor is authorized to promulgate all other rules and regulations necessary for the proper implementation and enforcement of subchapters II and IV of this chapter.

(d) The Mayor may require any person subject to the provisions of § 10-211 to maintain such written records and to file with the Mayor written reports containing such information as the Mayor shall deem necessary for the proper

implementation and enforcement of subchapters II and IV of this chapter. (1973 Ed., § 10-214; Apr. 19, 1977, D.C. Law 1-123, § 3-104, 24 DCR 2371.)

Section references. — This section is referred to in § 10-215.

Legislative history of Law 1-123. — See note to § 10-201.

Exemption from moratorium on conver-

sion of full service retail service stations: Sun Refining & Marketing Co. (Sunoco) Station located at 2305 Pennsylvania Ave. — See Mayor's Order 91-34, February 28, 1991.

§ 10-215. Violations; notice, order, injunction, and penalties.

(a) Whenever the Mayor has reason to believe that any person has violated or is violating any provision of subchapter II or IV of this chapter or the rules and regulations promulgated pursuant thereto, he shall cause written notice to be served upon such person in the manner provided by law. Such notice shall specify the provision or provisions that the Mayor has reason to believe that the person has violated or is violating and the ultimate facts or actions upon which the Mayor bases his belief. The Mayor shall also cause a written order to be served upon such person directing such person to immediately cease and desist from continuing such violation. If the person so ordered refuses or fails to comply with such order, the Mayor shall be authorized to apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or permanent injunction restraining such person from continuing such violation. The court shall have jurisdiction to grant such temporary restraining order, preliminary injunction, permanent injunction, or other relief as may be appropriate under the circumstances.

(b) Any violation of any provision of subchapter II or IV of this chapter or the rules and regulations promulgated pursuant thereto, shall constitute a misdemeanor and shall, upon conviction thereof, be punishable by a fine of not more than \$300 or by imprisonment for not more than 90 days or both. In the event of any violation of any provision of subchapter II or IV of this chapter or the rules and regulations promulgated pursuant thereto, each and every day of such violation shall constitute a separate offense and the penalties provided for herein shall be applicable to each such separate offense.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of §§ 10-211 through 10-215 or § 10-231, or any rules or regulations issued under the authority of those sections, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (1973 Ed., § 10-215; Apr. 19, 1977, D.C. Law 1-123, § 3-105, 24 DCR 2371; Oct. 5, 1985, D.C. Law 6-42, § 419, 32 DCR 4450.)

Legislative history of Law 1-123. — See note to § 10-201.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs, Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187,

which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

*Subchapter III. Marketing Agreements.***§ 10-221. Nonwaiverable conditions; conditions affecting marketing agreements.**

(a) All marketing agreements shall be in writing and shall be subject to the nonwaiverable conditions set forth in this section, whether or not such conditions are expressly set forth in such marketing agreements. For the purposes of this section, the term "marketing agreement" shall also include any oral or written collateral or ancillary agreement. No marketing agreement shall:

(1) Require a retail dealer to keep his retail service station open for business for any specified number of hours per day, or days per week, or for any specified hours of the day, or days of the week, except as otherwise provided in § 10-223(c)(5);

(2) Require a retail dealer to purchase or accept delivery of, on consignment or otherwise, any products from the distributor other than such motor fuels and petroleum products as are specified in the marketing agreement;

(3) Fix, maintain, or establish, or grant to the distributor the right, privilege, or authority to fix, maintain, or establish, the prices at which the retail dealer shall sell any motor fuels, petroleum products, or automotive products;

(4) Require the retail dealer to meet any sales quotas for any motor fuels, petroleum products, or automotive products;

(5) Prohibit a retail dealer from selling, assigning, or otherwise transferring his marketing agreement or any interest therein to another person;

(6) Prohibit a retail dealer from purchasing or accepting delivery of, on consignment or otherwise, any motor fuels, petroleum products, automotive products, or other products from any person who is not a party to the marketing agreement or prohibit a retail dealer from selling such motor fuels or products, provided that if the marketing agreement permits the retail dealer to use the distributor's trademark, the marketing agreement may require such motor fuels, petroleum products, and automotive products to be of a reasonably similar quality to those of the distributor, and provided further that the retail dealer shall neither represent such motor fuels or products as having been procured from the distributor nor sell such motor fuels or products under the distributor's trademark;

(7) Require a retail dealer to take part in any promotional or advertising campaign which will require the retail dealer to use, utilize, or accept any premiums, coupons, posters, stamps, tickets, gifts, bonuses, rebates, or other promotional items;

(8) Contain any provision which in any way limits the right of any party to such marketing agreement to a trial by jury or to the interposition of counter-claims or cross-claims;

(9) Contain any provision which requires the retail dealer to assent to any release, assignment, novation, waiver, or estoppel which would relieve any person from any liability imposed by this subchapter or would negate any rights granted to a retail dealer by this subchapter;

(10) Be for a term of less than 1 year; or

(11) Contain any term or condition which, directly or indirectly, violates this subchapter.

(b) Nothing contained within this section shall be construed as prohibiting a distributor from suggesting or advising the retail dealer of appropriate or reasonable hours of operation, days of operation, or prices, provided that the distributor shall in no way or manner attempt to threaten or coerce the retail dealer into following his suggestions or advice. Nothing contained within this section shall be construed as prohibiting a retail dealer from agreeing to purchase or accept delivery of other products or equipment from the distributor or from participating financially or otherwise in any promotional or advertising campaign sponsored by the distributor, provided that the distributor shall in no way or manner attempt to threaten or coerce such actions on the part of the retail dealer. (1973 Ed., § 10-221; Apr. 19, 1977, D.C. Law 1-123, § 4-201, 24 DCR 2371.)

Legislative history of Law 1-123. — See note to § 10-201.

Franchise agreements may not be for less than one year's duration, absent an application of subsection (a)(10) that obstructs a purpose of the federal Petroleum Marketing Practices Act (15 U.S.C. §§ 2801 to 2841). *Davis v. Gulf Oil Corp.*, App. D.C., 485 A.2d 160 (1984).

Franchisee's right to transfer interest in franchise. — The only statutorily permitted restriction on franchisee's right to transfer *inter vivos* his interest in a franchise appears in § 10-225, which enables the distributor to disapprove a proposed franchise transfer if the distributor, after reviewing information about the prospective transferee's qualifications to operate the franchise, can establish that its refusal to approve the prospective transfer is reasonable. Apart from this specific qualified limitation, the Retail Service Station Act provides to the retailer a readily transferable right in his franchise. *Dege v. Milford*, App. D.C., 574 A.2d 288 (1990).

Franchisor's right of first refusal in service station franchise agreement effectively functioned as a statutorily impermissible restraint on the freedom granted to service station operator by subdivision (a)(5) of this section to transfer his interest in the station "to another person." *Dege v. Milford*, App. D.C., 574 A.2d 288 (1990).

The right to transfer granted by the Retail Service Station Act (RSSA) is given in broad terms; the right encompasses "selling, assigning, or otherwise transferring." An element of a right of transferability is the right to decide whether and to who to transfer, and the right of first refusal incorporated into a franchise agreement to a significant extent effectively shifts that right to the franchisor, once the franchise holder has decided to transfer to any other person. Such a result is inconsistent with the interrelated provisions of the RSSA governing the transferability of the franchise. *Dege v. Milford*, App. D.C., 574 A.2d 288 (1990).

§ 10-222. Disclosures to prospective retail dealers.

Prior to entering into any marketing agreement with any prospective retail dealer, a distributor shall disclose the information set forth in this section to such prospective retail dealer in writing. Prior to transferring any marketing agreement or interest therein to any prospective transferee, a retail dealer shall disclose the information set forth in this section to such prospective transferee in writing:

(1) The name and last known address of the previous retail dealer or dealers for the immediately prior 3-year period or for the entire period during which the distributor has either sold or distributed motor fuels or petroleum products to or through such retail service station location or owned, leased, or otherwise controlled such location, whichever period is shorter, and the

grounds or reasons for the termination of, cancellation of, or failure to renew each marketing agreement with such previous retail dealer or dealers; and

(2) The existence of any present commitments, negotiations, or plans for the future sale, demolition, or other disposition of such location. (1973 Ed., § 10-222; Apr. 19, 1977, D.C. Law 1-123, § 4-202, 24 DCR 2371.)

Section references. — This section is referred to in § 10-226.

Legislative history of Law 1-123. — See note to § 10-201.

§ 10-223. Termination, cancellation, and failure to renew.

(a)(1) A retail dealer shall have the right to terminate or repudiate any marketing agreement to which he is a party for any reason, without the imposition of any damages or penalties and without any recourse by the distributor for such termination or repudiation, within 7 days, not including Saturdays, Sundays, or holidays, after the day on which performance of such marketing agreement commences. For purposes of this subsection, the term “marketing agreement” shall not include any renewal, extension, modification, amendment, or novation of an existing marketing agreement. For purposes of this subsection, the term “performance” shall mean the granting of a present right, privilege, or authority to use a trademark, the granting of a present right, privilege, or authority to occupy a retail service station, or the actual delivery of any motor fuels, petroleum products, or automotive products to the retail dealer. In order to exercise his right to terminate or repudiate a marketing agreement pursuant to this subsection, the retail dealer shall:

(A) Mail written notice, by registered or certified mail, to the distributor of his intention to exercise his right under this subsection within the period specified in this subsection;

(B) Discontinue use of any trademark presently being used by such retail dealer pursuant to the marketing agreement;

(C) Deliver or tender, so far as is practical, to the distributor all money, equipment, and merchantable products, including all motor fuels, petroleum products, and automotive products which the retail dealer has not presently sold, which have been loaned, sold, or delivered to the retail dealer pursuant to the marketing agreement within 10 days after mailing the notice specified in this subsection; and

(D) Deliver or tender to the distributor full possession of any retail service station provided by the distributor pursuant to the marketing agreement within 10 days after mailing the notice specified in this subsection.

(2) The retail dealer shall receive full credit, or the cash equivalent, for all money, equipment, and merchantable products delivered to the distributor pursuant to subparagraph (C) of paragraph (1) of this subsection. Nothing contained within this subsection shall be construed as granting a similar right to terminate or repudiate to the distributor under a marketing agreement or as prohibiting the retail dealer from cancelling a marketing agreement during the period specified in this subsection.

(b)(1) No retail dealer or distributor, except as otherwise provided in subsection (a) of this section, shall terminate, cancel, or fail to renew a

marketing agreement unless he furnishes prior written notice to the other party. Such notice shall be sent to the other party by registered or certified mail not less than 90 days prior to the date on which the marketing agreement is to be terminated, cancelled, or not renewed, unless a shorter period is provided for in this subsection. Such notice shall contain a statement of the party's intention to terminate, cancel, or fail to renew the marketing agreement, the date on which such action shall become effective, and a statement of the specific grounds for such action. No distributor shall terminate, cancel, or fail to renew a marketing agreement, or notify a retail dealer of his intention to take such action, unless he reasonably and in good faith believes that the facts and circumstances existing do, in fact, justify his reliance on the grounds specified in his notice of intention to take such action. Notice furnished pursuant to this subsection shall be effective on the date of the mailing.

(2) In the event that a termination or cancellation is based upon 1 or more of the grounds specified in paragraphs (1) through (4) and (10) through (17) of subsection (c) of this section, the 90 days advance notice shall not be required. However, in such an event, the distributor shall furnish written notice to the retail dealer as far in advance of the effective date of such termination or cancellation as is reasonably practical under the circumstances.

(3) The distributor's failure to furnish prior written notice, as required by this subsection, of his intention not to renew a marketing agreement, whether or not such marketing agreement provides for automatic extension or renewal, shall constitute a renewal of the marketing agreement for a term of 1 year from its stated expiration date.

(c) No distributor shall terminate or cancel any marketing agreement with a retail dealer, either directly or indirectly, unless such termination or cancellation is based upon 1 or more of the grounds specified in this subsection. No distributor shall terminate or cancel any marketing agreement with a retail dealer unless the grounds for such termination or cancellation are expressly set forth in the marketing agreement:

(1) The retail dealer has failed to pay financial obligations due to the distributor under the marketing agreement, including, but not limited to, rents for any equipment or retail service station provided by the distributor and payments for any motor fuels, petroleum products, or automotive products delivered, on consignment or otherwise, to the retail dealer by the distributor pursuant to the marketing agreement, within the time and in the manner prescribed by the marketing agreement;

(2) The retail dealer has filed for or has been declared bankrupt, has petitioned for or has been declared insolvent, or has petitioned for a reorganization or credit arrangement under the applicable laws;

(3) A termination or dissolution of the partnership, corporation, or other entity operating the retail service station or the death of the retail dealer, provided that a termination or dissolution of a partnership or other entity shall not constitute a ground for the termination or cancellation of a marketing agreement where the remaining partners or individual members of the other entity have notified the distributor of their intention to operate the retail service station and to acquire the interests of the departing partners or members pursuant to § 10-225(a) to (d);

(4) The retail dealer has voluntarily abandoned, or has given notice of his intention to voluntarily abandon, his retail service station, other than pursuant to subsection (a) of this section or § 10-225;

(5) The retail dealer has unjustifiably left his retail service station vacant or unattended for an unreasonable period of time or has unjustifiably failed to open his retail service station for business for an unreasonable number of days during any calendar year. The period of time and number of days which shall be deemed unreasonable shall be expressly set forth in the marketing agreement, but in no event may such period of time be less than 9 consecutive days or such number of days be less than 18 days during any calendar year;

(6) The retail dealer, or some other person over whom the retail dealer has control and was grossly negligent in not exercising such control, has wilfully or maliciously destroyed or damaged the real or personal property, including any equipment that is used in the operation of the retail service station, of the distributor furnished pursuant to the marketing agreement and the retail dealer has refused to replace or repair such real or personal property;

(7) The retail dealer, or some other person over whom the retail dealer has control and was grossly negligent in not exercising such control, has deliberately adulterated, commingled, misbranded, mislabeled, or misrepresented to his customers any motor fuels, petroleum products, or automotive products delivered to the retail dealer by the distributor pursuant to the marketing agreement in a manner prohibited by the marketing agreement or by federal or District of Columbia law or contrary to customary practices in the retail service station industry;

(8) The retail dealer has made materially false, deceptive, or misleading representations to the distributor which are related to the operation of his retail service station business;

(9) The retail dealer has failed to comply with any federal or District of Columbia laws, rules, or regulations relating to the operation of a retail service station, including, but not limited to, laws, rules, or regulations relating to the payment of taxes and the maintenance of any necessary licenses, permits, or registrations, which the marketing agreement made the retail dealer responsible for complying with, and such failure to comply with such laws, rules, or regulations has or will adversely affect the business relationship between the retail dealer and the distributor or the business of the distributor;

(10) The retail dealer has been convicted of the commission or attempt to commit a felony, criminal misconduct or violations of law involving moral turpitude, fraud, or commercial dishonesty, which is related to the operation of his retail service station business and which would affect the ability of the retail dealer to operate his retail service station business or would tend to defame or seriously damage the reputation of the distributor or his trademark, provided that this subsection shall not apply to convictions that have been disclosed to the distributor by the retail dealer prior to entering into the marketing agreement;

(11) The condemnation, appropriation, or other public taking of the retail service station location covered by the marketing agreement, in whole or part, pursuant to the power of eminent domain or the loss of or damage to the retail

service station facility by an act of God, to the extent that such taking or damage makes the continued operation of the retail service station completely unfeasible;

(12) The marketing agreement grants the retail dealer the right, privilege, or authority to occupy a retail service station leased by the distributor from another person and such lease is terminated, cancelled, or not renewed by such other person for a cause beyond the reasonable control of the distributor;

(13) The distributor has lost his legal right, for a cause beyond his reasonable control, to grant the retail dealer the right, privilege, or authority to use any trademark provided for in the marketing agreement;

(14) The retail dealer has been afflicted with so severe a physical or mental disability that he is rendered incapable of operating his retail service station for an unreasonable period of time and has been unable to provide for the continued operation of his retail service station by another person;

(15) The retail dealer has failed to substantially comply with any other essential and reasonable requirement, condition, or provision expressly set forth in the marketing agreement;

(16) The existence or occurrence of any cause or circumstance which would make termination or cancellation of the marketing agreement reasonable, just, and equitable in light of the facts and circumstances then existing; or

(17) The retail dealer and the distributor have executed a mutual agreement to terminate the marketing agreement in writing.

(d) No distributor shall fail to renew a marketing agreement with a retail dealer, either directly or indirectly, unless such failure to renew is based upon 1 or more of the grounds specified in this subsection. No distributor shall fail to renew a marketing agreement unless the grounds for such failure to renew are expressly set forth in the marketing agreement:

(1) The existence of any of the grounds which would justify the termination or cancellation of a marketing agreement pursuant to subsection (c) of this section;

(2) The distributor intends to and does in fact withdraw entirely, within 1 year of the effective date of the notice furnished pursuant to subsection (b) of this section, from the sale in the District of Columbia of motor fuels, petroleum products, and automotive products;

(3) The marketing agreement grants the retail dealer the right, privilege, or authority to occupy a retail service station owned, leased, or otherwise controlled by the distributor and the distributor intends to and does in fact withdraw entirely, within 1 year of the effective date of the notice furnished pursuant to subsection (b) of this section, from the business of owning, leasing, controlling, and operating retail service stations in the District of Columbia;

(4) The marketing agreement grants the retail dealer the right, privilege, or authority to occupy a retail service station owned, leased, or otherwise controlled by the distributor and the distributor intends to sell or lease the retail service station location to a person other than a subsidiary, parent, affiliate, or other entity controlled or managed by the distributor or controlling or managing the distributor, for a purpose other than the retail sale of motor

fuels or intends to relinquish a leasehold interest in the retail service station location, without any intention of purchasing, executing a new lease for, or otherwise regaining control of the location;

(5) A failure on the part of the distributor and the retail dealer, both parties having acted in good faith in trying to effect a renewal, to agree to any reasonable and essential changes in or additions to the marketing agreement considering the then existing facts and circumstances;

(6) The retail dealer has failed to make reasonable repairs and maintenance to the real or personal property of the distributor furnished pursuant to the marketing agreement provided that the marketing agreement requires the retail dealer to assume such responsibility for repair and maintenance;

(7) The retail dealer has failed to substantially comply with any reasonable minimum standards for the operation of a retail service station which are expressly set forth in the marketing agreement, including, but not limited to, standards concerning the cleanliness and appearance of the retail service station and the safeness of facilities and services, within a reasonable time after receiving written notice of noncompliance and such failure to comply will damage the integrity of the distributor's trademark or the reputation of either the distributor or other retail service stations operating under the distributor's trademark; or

(8) The distributor has received substantiated repeated customer complaints concerning the conduct or practices of the retail dealer, including, but not limited to, repair or maintenance work of a substandard quality, obnoxious or disrespectful behavior towards customers, or dishonest, unethical, or fraudulent practices, and the continuance of such conduct or practices will damage the integrity of the distributor's trademark or the reputation of either the distributor or other retail service stations operating under the distributor's trademark.

(e)(1) No distributor shall terminate, cancel, or fail to renew any marketing agreement, either directly or indirectly, for any of the following reasons:

(A) Refusal of the retail dealer to accept a renewal of a marketing agreement for a term of less than 1 year;

(B) Refusal of the retail dealer to take part in any promotional or advertising campaign, to meet sales quotas suggested by the distributor, to purchase or accept delivery of any motor fuels or petroleum products not specified in the marketing agreement, or any other products or equipment, to sell motor fuels, petroleum products, or automotive products at a price suggested by the distributor, or to comply with any standard of performance imposed upon such retail dealer by the distributor which exceeds the standards of performance imposed by the marketing agreement;

(C) Refusal of the retail dealer to keep his retail service station open and operating during those hours or days which, in the reasonable opinion of the retail dealer, are unprofitable or to follow the suggestions or advice of the distributor concerning days or hours of operation;

(D) The retail dealer's attempt to exercise his right to sell, assign, or otherwise transfer his marketing agreement or any interest therein to another person; or

(E) The distributor's desire to obtain possession of a retail service station currently leased to the retail dealer in order to engage in the retail sale of motor fuel on its own behalf.

(2) No marketing agreement shall specify any of the reasons contained in this subsection as grounds for the termination of, cancellation of, or failure to renew such marketing agreement by the distributor. (1973 Ed., § 10-223; Apr. 19, 1977, D.C. Law 1-123, § 4-203, 24 DCR 2371.)

Section references. — This section is referred to in §§ 10-221, 10-224, and 10-226.

Legislative history of Law 1-123. — See note to § 10-201.

Preemption by federal Petroleum Marketing Practices Act. — Federal Petroleum Marketing Practices Act (15 U.S.C. §§ 2801 to 2841) preempts only those provisions of D.C.'s Retail Service Stations Act which address termination and renewal of franchises, or the notice required with respect to these practices; any RSSA provision that regulates some other aspect of franchise relationship is preempted under an implied preemption doctrine only insofar as the RSSA provision stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the federal PMPA. *Davis v. Gulf Oil Corp.*, App. D.C., 485 A.2d 160 (1984).

Insofar as paragraphs (1) and (3) of subsec-

tion (b) are not the same as the applicable provisions of the federal Petroleum Marketing Practices Act (15 U.S.C. §§ 2801 to 2841), those paragraphs are preempted. *Davis v. Gulf Oil Corp.*, App. D.C., 485 A.2d 160 (1984).

Extension following nonrenewal of lease. — When a franchisor does give the required notice of nonrenewal before the date on which a retail service station lease expires, and nonrenewal will not take effect until a date after the conclusion of the term, the resulting extension is, facially, a periodic tenancy that cannot be reformed or otherwise deemed, and specifically enforced as, an automatic one-year lease renewal at the original expiration date under § 10-221(a)(10). *Davis v. Gulf Oil Corp.*, App. D.C., 485 A.2d 160 (1984).

Cited in *Dege v. Milford*, App. D.C., 574 A.2d 288 (1990).

§ 10-224. Retail dealer's remedies.

(a) The remedies provided for in this section are in addition to any and all other remedies available to the retail dealer under this subchapter, the marketing agreement, any other statute or act, or law or equity.

(b) In the event of any termination of, cancellation of, or failure to renew a marketing agreement, whether by the unilateral action of either the retail dealer or the distributor, by mutual agreement, by the death of the retail dealer, or otherwise, the distributor shall make or cause to be made an offer in good faith to repurchase from the retail dealer or his legal representative within 30 days after the effective date of such termination, cancellation, or nonrenewal, any and all merchantable products, including, but not limited to, any motor fuels, petroleum products, and automotive products, at the full price originally paid or at the then current wholesale price, whichever price shall be lower, and any and all equipment, including any equipment which has been affixed or appended, after April 19, 1977, with the permission of the distributor, to a retail service station leased from the distributor, at the current fair market value, which have been purchased by the retail dealer from the distributor and which have been tendered, to the extent that such tender may be practical, by the retail dealer or his legal representative to the distributor. If the distributor does not make or cause to be made a good faith offer to repurchase the retail dealer's products and equipment within the 30-day period provided for in this subsection, the retail dealer or his legal representative may sell the products and equipment for as reasonable a price as may be

obtained, may apply the balance owed by the distributor against any existing indebtedness owed by the retail dealer to the distributor, and shall have a cause of action against the distributor for the difference. In the event that the distributor repurchases the retail dealer's products and equipment the distributor shall have the right to first apply the value of the products and equipment being repurchased against any existing indebtedness owed directly to the distributor by the retail dealer. The distributor's obligation to repurchase shall be enforceable only to the extent that there are no other valid claims or liens against such products or equipment by or on behalf of other creditors of the retail dealer.

(c) Equipment purchased or otherwise acquired by the retail dealer and affixed or appended, after April 19, 1977, with the permission of the lessor, to a retail service station leased by the retail dealer shall remain the property of the retail dealer, notwithstanding the fact that it is permanently affixed or the existence of any contrary provisions in a marketing agreement, other agreement, or law. Upon the termination of, cancellation of, or failure to renew a lease or other agreement or the termination of, cancellation of, or failure to renew a marketing agreement, the retail dealer or his legal representative shall have a reasonable time in which to remove such equipment. In removing such equipment, the retail dealer or his legal representative shall leave the retail service station premises in substantially the same condition as they were at the time the equipment was affixed or appended.

(d) If the distributor terminates, cancels, or fails to renew a marketing agreement for any of the grounds specified in § 10-223(c)(2), (3), (11), or (14) and § 10-223(d)(2), (3), or (4) or for any cause or circumstance allowed under § 10-223(c)(16) which involves the retail dealer's failure to comply with the marketing agreement or which was not beyond the reasonable control of the distributor to prevent, the distributor shall pay to the retail dealer, within 30 days of the effective date of the termination, cancellation, or failure to renew, the full value of any business goodwill enjoyed by the dealer on the effective date of the notice furnished pursuant to § 10-223(b). (1973 Ed., § 10-224; Apr. 19, 1977, D.C. Law 1-123, § 4-204, 24 DCR 2371.)

Section references. — This section is referred to in § 10-226.

Legislative history of Law 1-123. — See note to § 10-201.

§ 10-225. Sale, assignment, or other transfer of a marketing agreement.

(a) No distributor shall unreasonably withhold his approval of any sale, assignment, or other transfer, including any transfer of the retail dealer's right, privilege, or authority to occupy a retail service station pursuant to a marketing agreement, of a marketing agreement or any interest therein to another person by a retail dealer.

(b) No retail dealer shall sell, assign, or otherwise transfer a marketing agreement or any interest therein unless he furnishes prior written notice to the distributor of his intention to make such sale, assignment, or other transfer. Such notice shall be sent to the distributor by registered or certified

mail and shall include the prospective transferee's name and address, a statement of the prospective transferee's financial qualifications, a statement of the prospective transferee's business experience during the previous 5 years, and a statement of the prospective transferee's ability, character, and credit history.

(c) The distributor shall either approve or disapprove such sale, assignment, or other transfer in writing within 60 days after receipt of the notice specified in subsection (b) of this section. A distributor's failure to notify the retail dealer of his approval or disapproval shall be construed as an approval of the proposed sale, assignment, or other transfer.

(d) In order for a sale, assignment, or other transfer of a marketing agreement to be valid, the prospective transferee shall agree in writing to comply with all valid requirements, conditions, and provisions of the existing marketing agreement which may be applicable.

(e)(1) A prospective transferee shall have the right to terminate or repudiate any sale, assignment, or other transfer of a marketing agreement or any interest therein for any reason, without the imposition of any damages or penalties for such action and without any recourse by the transferor or distributor for such action, within 7 days, not including Saturdays, Sundays, or holidays, after the day on which the sale, assignment, or other transfer is consummated. In order to exercise his right under this subsection, the transferee shall:

(A) Mail written notice, by registered or certified mail, to the transferor and the distributor of his intention to exercise his right under this subsection within the period specified in this subsection;

(B) Discontinue use of any trademark presently being used by such transferee pursuant to the marketing agreement;

(C) Deliver or tender, so far as is practical, to the transferor or distributor, as appropriate, all money, equipment, and merchantable products which have been loaned, sold or delivered to the transferee by either the transferor or the distributor and which the transferee has not already sold, within 10 days after mailing the notice specified in this subsection; and

(D) Deliver or tender to the transferor full possession of any retail service station transferred to the transferee within 10 days after mailing the notice specified in this subsection.

(2) The transferee shall receive full credit, or the cash equivalent, for all money, equipment, and merchantable products delivered or tendered to the transferor or distributor, as appropriate, pursuant to subparagraph (C) of paragraph (1) of this subsection. Nothing contained within this subsection shall be construed as granting a similar right to terminate or repudiate to either the transferor or the distributor.

(f)(1) Upon the death or retirement of a retail dealer, the distributor shall grant a 1-year trial marketing agreement in the name of a successor who has been designated by the retail dealer and approved by the distributor. The designated successors shall be limited to a retail dealer's spouse, adult children, adult stepchildren, and the approval of the designated successor by the distributor shall not be unreasonably withheld.

(2) In order for the requirement in paragraph (1) of this subsection to be effective, the retail dealer shall have provided written notice to the distributor designating the successor dealer. The distributor shall approve or disapprove the designated successor, in writing, within 60 days after receipt of the written designation notice. A distributor's failure to notify a retail dealer of the approval or disapproval of any designated successor shall be construed as an approval of the designated successor.

(3) A 1-year trial marketing agreement shall contain the same terms and conditions as were contained in the marketing agreement in effect prior to the retail dealer's death or retirement. Pursuant to the provisions of this subchapter, a successor dealer, with the approval of the distributor, may sell, assign, or otherwise transfer the trial marketing agreement granted under paragraph (1) of this subsection. (1973 Ed., § 10-225; Apr. 19, 1977, D.C. Law 1-123, § 4-205, 24 DCR 2371; Feb. 9, 1984, D.C. Law 5-45, § 2, 30 DCR 5635.)

Cross references. — As to general powers of personal representatives, see § 20-741.

Section references. — This section is referred to in § 10-223.

Legislative history of Law 1-123. — See note to § 10-201.

Legislative history of Law 5-45. — Law 5-45, the "Successor in Interest to a Gasoline Products Marketing Agreement Act of 1983," was introduced in Council and assigned Bill No. 5-12, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on September 20, 1983 and October 4, 1983, respectively. Signed by the Mayor on

October 21, 1983, it was assigned Act No. 5-71 and transmitted to both Houses of Congress for its review.

Franchisee's right to transfer interest in franchise. — The only statutorily permitted restriction on franchisee's right to transfer *inter vivos* his interest in the franchise appears in this section. Apart from this specific qualified limitation, the Retail Service Station Act provides to the retailer a readily transferable right in his franchise. *Dege v. Milford*, App. D.C., 574 A.2d 288 (1990).

Cited in *Waverly Taylor, Inc. v. Polinger*, App. D.C., 583 A.2d 179 (1990).

§ 10-226. Civil actions.

(a)(1) In addition to any and all other remedies available to the retail dealer under this subchapter, the marketing agreement, any other statute or act, or law or equity, a retail dealer may maintain a civil action against a distributor for:

- (A) Failure to make such disclosures as are required by § 10-222;
- (B) Failure to repurchase as required by § 10-224(b);
- (C) Failure to pay the full value of any business goodwill as required by § 10-224(d);
- (D) Wrongful or illegal cancellation of, termination of, or failure to renew a marketing agreement with the retail dealer under § 10-223;
- (E) Unreasonably withholding approval of a proposed sale, assignment, or other transfer of the marketing agreement.

(2) The court may award actual damages, including ascertainable loss of goodwill as provided for in § 10-224(d), sustained by the retail dealer as a result of the distributor's violation of this subchapter and may also grant such other legal or equitable relief as may be appropriate, including, but not limited to, declaratory judgment, specific performance, and injunctive relief.

(3) The court may, unless the action was frivolous, direct that costs of the action, including reasonable attorney and expert witness fees, be paid by the

distributor. If the court finds that the distributor's wrongful or illegal termination of, cancellation of, or failure to renew the marketing agreement was wilful or intentional, the court may also award the retail dealer ascertainable loss of goodwill and punitive damages.

(b) No prospective transferee shall have a cause of action against a distributor as a result of the distributor's disapproval of a proposed sale, assignment, or other transfer of a marketing agreement.

(c) A civil action brought by a retail dealer against a distributor pursuant to this section shall be commenced within 2 years after such cause of action arose. (1973 Ed., § 10-226; Apr. 19, 1977, D.C. Law 1-123, § 4-206, 24 DCR 2371.)

Legislative history of Law 1-123. — See note to § 10-201.

Cited in *Dege v. Milford*, App. D.C., 574 A.2d 288 (1990).

§ 10-227. Application of subchapter.

(a) This subchapter shall only apply to that portion of a marketing agreement which concerns the operation of a retail service station which is located within the District of Columbia and only to the extent of the business conducted by a retail dealer within the District of Columbia.

(b) This subchapter shall apply to any and all marketing agreements entered into after April 19, 1977. The term "entered into" shall include any renewal, extension, modification, amendment, or novation of a preexisting marketing agreement.

(c) This subchapter shall also apply to any failure to renew a preexisting marketing agreement. (1973 Ed., § 10-227; Apr. 19, 1977, D.C. Law 1-123, § 4-207, 24 DCR 2371.)

Legislative history of Law 1-123. — See note to § 10-201.

Subchapter IV. Moratorium on Conversions to Limited Service Retail Service Stations.

§ 10-231. Prohibition on conversions; Gas Station Advisory Board.

(a) For the purposes of this section, the term "full service retail service station" means any retail service station location which provides a garage, service bay, work area, or similar enclosed area for repairing, maintaining, servicing, or otherwise working on motor vehicles, or any service islands. Such repair, maintenance, and service work may include, but is not limited to, the installation or replacement of batteries, tires, fan belts, lights, brakes, water pumps, mufflers and other parts and accessories and the performance of motor oil changes, lubrications, wheel alignments, tune-ups, tire repairs, brake adjustments, and general repair and maintenance work and services.

(b) No retail service station which is operated as a full service retail service station on or after April 19, 1977, may be structurally altered, modified, or otherwise converted, irrespective of the type or magnitude of the alteration,

modification, or conversion, including, but not limited to, any alteration, modification, or conversion which has the effect of merely obstructing access to an existing garage, service bay, work area, or similar enclosed area by any motor vehicle which was previously accommodated, into a non-full service facility until October 1, 1995.

(c) No person who is an operator of any full service retail service station on or after April 19, 1977, including any person who is a subsequent operator of any such retail service station, or who, in any manner, controls the operation of any such retail service station, shall substantially reduce the number, types, quantity, or quality of the repair, maintenance, and other services, including the retail sale of motor fuels, petroleum products, and automotive products, previously offered until October 1, 1995. Such operators shall maintain the retail service station's existing garages, service bays, work areas, and similar areas in a fully operational condition and reasonably equipped to perform repair, maintenance, and service work on motor vehicles, including the provision of a qualified individual or individuals who is or are capable of performing repair, maintenance, and service work on motor vehicles during a reasonable number of hours per day and of days per week. This subsection shall not be construed as prohibiting any person who operates or controls a full service retail service station from discontinuing the retail sale of motor fuels at such retail service station, provided that less than 20 per centum of such retail service station's gross revenue derived from the retail sale of motor fuels, petroleum products, and automotive products and from the repair, maintenance, and servicing of motor vehicles is derived from the retail sale of motor fuels, and provided further that such discontinuance of the retail sale of motor fuels shall not authorize any other substantial reduction in repair, maintenance, or other services previously offered. This subsection shall not be construed as prohibiting a full service retail service station from selling motor fuels on a self-service basis, provided that such retail service station continues to sell motor fuels on a non-self-service basis.

(d)(1) Based on the recommendation of the Gas Station Advisory Board (hereafter referred to as the "Board"), the Mayor may grant exemptions to the prohibitions contained in subsections (b) and (c) above. In considering petitions for exemptions, the Board shall consider the following criteria:

- (A) Whether a station is experiencing financial hardship;
- (B) Whether there is another retail service station within 1 mile of the station which provides equivalent service facilities;
- (C) Whether the petitioner will agree to improve the station in the following ways:
 - (i) Improving or increasing the lighting of the facility;
 - (ii) Improving customer accessibility to the gasoline dispensers; and
 - (iii) Improving customer conveniences including separate mens and ladies restroom facilities, a working air hose for use on automobile and bicycle tires, and water for windshield cleaning equipment.

(2) Repealed.

(e)(1) Within 30 days of December 29, 1979, the Mayor shall appoint a Gas Station Advisory Board to make recommendations on petitions for exemptions.

The Board shall consist of 5 members: One representing the retail service station dealers, 1 representing the oil companies, 2 representing the consumer interests, and 1 representing the Mayor.

(2) The Board shall establish and publish, for 30 days comment, the rules and procedures which shall govern its conduct.

(3) The Board may establish and publish, for 30 days comment, additional criteria which shall be used in reviewing the petitions for exemptions.

(4) The Board shall cease to exist on October 1, 1995.

(f) The Mayor shall study the motor vehicle repair, maintenance, and other services being offered by existing full service retail stations and non-full service retail service stations to residents, commercial establishments, commuters, and other affected persons in the District of Columbia, both in terms of adequacy and in terms of convenience. This study shall include an analysis of the impact of converting existing full service retail service stations to non-full service retail service stations in various areas of the District of Columbia. The Mayor shall study the adequacy of existing retail service stations to serve the needs and convenience of residents, commercial establishments, commuters, and other affected persons with respect to the retail sale of motor fuels, petroleum products, and automotive products in various areas of the District of Columbia. The study shall include an examination of the petroleum products and automotive products being offered by commercial establishments other than retail service stations. The Mayor shall, if necessary, present to the Council a preliminary report within 30 days after September 21, 1988. A final report detailing the findings of the study, including the Mayor's recommendations or proposals with respect to any necessary or desirable legislation or other actions, shall be submitted to the Council no later than June 1, 1989. (1973 Ed., § 10-231; Apr. 19, 1977, D.C. Law 1-123, § 5-301, 24 DCR 2371; Dec. 29, 1979, D.C. Law 3-44, § 2(c), 26 DCR 2093; Oct. 24, 1981, D.C. Law 4-45, § 2, 28 DCR 4269; Mar. 14, 1985, D.C. Law 5-145, § 2, 31 DCR 5975; Dec. 16, 1987, D.C. Law 7-59, § 2, 34 DCR 7085; Sept. 21, 1988, D.C. Law 7-148, § 2, 35 DCR 5427; Aug. 17, 1991, D.C. Law 9-44, § 2, 38 DCR 4986.)

Section references. — This section is referred to in § 10-215.

Legislative history of Law 1-123. — See note to § 10-201.

Legislative history of Law 3-44. — See note to § 10-211.

Legislative history of Law 4-45. — Law 4-45, the "Extension of the Moratorium on Retail Service Station Conversions Act of 1981," was introduced in Council and assigned Bill No. 4-217, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 30, 1981 and July 14, 1981, respectively. Signed by the Mayor on August 6, 1981, it was assigned Act No. 4-80 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-145. — Law

5-145, the "Extension of the Moratorium on Retail Service Station Conversions Act of 1984," was introduced in Council and assigned Bill No. 5-438, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on October 9, 1984 and October 23, 1984, respectively. Signed by the Mayor on November 8, 1984, it was assigned Act No. 5-203 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-59. — Law 7-59, the "Extension of the Moratorium on Retail Service Station Conversions Amendment Temporary Act of 1987," was introduced in Council and assigned Bill No. 7-309. The Bill was adopted on first and second readings on September 29, 1987 and October 13, 1987, respectively. Signed by the Mayor on October

26, 1987, it was assigned Act No. 7-92 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-148. — Law 7-148, the “Extension of the Moratorium on Retail Service Station Conversions Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-316, which was referred to the Committee on Consumer and Regulatory Affairs and reassigned to the Committee on Human Services. The Bill was adopted on first and second readings on June 14, 1988 and June 28, 1988, respectively. Signed by the Mayor on June 30, 1988, it was assigned Act. No. 7-200 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-44. — Law 9-44, the “Extension of the Moratorium on Retail Service Station Conversions Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-127, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-81 and transmitted to both Houses of Congress for its review.

Delegation of Authority Under D.C. Law 7-148 “Extension of the Moratorium on Retail Service Station Conversions Amendment Act of 1988.” — See Mayor’s Order 89-20, January 23, 1989.

Exemption from Moratorium on Conversions of Full Service Retail Service Sta-

tions: Amoco Oil Co. Station located at 2917 Martin Luther King Jr. Avenue, S.E., Washington, D.C. — See Mayor’s Order 90-61, March 21, 1990.

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Amoco Oil Company (Ronnie’s Amoco) Station Located at 2830 Sherman Avenue, N.W., Washington, D.C. — See Mayor’s Order 92-14, February 10, 1992.

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Exxon Company, U.S.A. Station Located at 5215 North Capitol Street, N.E., Washington, D.C. — See Mayor’s Order 92-113, September 21, 1992.

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Exxon Company, U.S.A. Station Located at 1 Florida Avenue, N.E., Washington, D.C. — See Mayor’s Order 92-129, October 20, 1992.

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Amoco Oil Company Station Located at 2350 South Dakota Avenue, N.E., Washington, D.C. — See Mayor’s Order 93-52, April 30, 1993.

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Exxon Company, U.S.A. Station Located at 3201 Pennsylvania Avenue, S.E. — See Mayor’s Order 94-159, July 12, 1994 (41 DCR 4965).

Subchapter V. General Provisions.

§ 10-241. Statement of public policy.

This chapter shall constitute a statement of the public policy of the District of Columbia. The provisions of this chapter shall be liberally construed in order to effectively carry out the purposes of this chapter in the interests of the public health, safety, and welfare. (1973 Ed., § 10-241; Apr. 19, 1977, D.C. Law 1-123, § 6-401, 24 DCR 2371.)

Legislative history of Law 1-123. — See note to § 10-201.

Construction. — Because the Retail Service Station Act seeks to effectuate broad remedial purposes, its provisions must be liberally con-

strued in favor of independent retailers. *Dege v. Milford*, App. D.C., 574 A.2d 288 (1990).

Cited in *Davis v. Gulf Oil Corp.*, App. D.C., 485 A.2d 160 (1984).

§ 10-242. Severability.

If any provision or part thereof of this chapter or the application thereof to any person or circumstance is declared unconstitutional or invalid, such invalidity, unconstitutionality, or inapplicability shall not affect any other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, all provisions of this chapter

are hereby declared to be severable. (1973 Ed., § 10-242; Apr. 19, 1977, D.C. Law 1-123, § 6-402, 24 DCR 2371.)

Legislative history of Law 1-123. — See note to § 10-201.

PART II.

JUDICIARY AND JUDICIAL PROCEDURE.

- TITLE 11. ORGANIZATION AND JURISDICTION OF THE COURTS.
TITLE 12. RIGHT TO REMEDY.
TITLE 13. PROCEDURE GENERALLY.
TITLE 14. PROOF.
TITLE 15. JUDGMENTS AND EXECUTIONS; FEES AND COSTS.
TITLE 16. PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS.
TITLE 17. REVIEW.
-

TITLE 11. ORGANIZATION AND JURISDICTION OF THE COURTS.

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Cross references. — As to adjudication of
certain traffic offenses, see Chapter 6 of Title
40.

CHAPTER 1. GENERAL PROVISIONS.

Sec.

11-101. Judicial power.

11-102. Status of District of Columbia Court of Appeals.

§ 11-101. Judicial power.

The judicial power in the District of Columbia is vested in the following courts:

(1) The following Federal Courts established pursuant to article III of the Constitution:

(A) The Supreme Court of the United States.

(B) The United States Court of Appeals for the District of Columbia Circuit.

(C) The United States District Court for the District of Columbia.

(2) The following District of Columbia courts established pursuant to article I of the Constitution:

(A) The District of Columbia Court of Appeals.

(B) The Superior Court of the District of Columbia. (July 29, 1970, 84 Stat. 475, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-101.)

Cross references. — As to limitation on authority of Council to pass any act, resolution, or rule with respect to any provision of this title, see § 1-233.

As to provisions of District Charter relating to judicial powers, see § 431 of Appendix to this title.

Purpose of court reform law. — Underlying the District of Columbia Court Reform and Criminal Procedure Act of 1970 was Congress' wish to delineate the functions of the federal and local court systems in the District of Columbia. *Reichman v. Franklin Simon Corp.*, App. D.C., 392 A.2d 9 (1978).

Congressional intent. — In creating local courts for the District of Columbia, Congress intended them to be analogous to state courts. *United States Jaycees v. Superior Court*, 491 F. Supp. 579 (D.D.C. 1980); *Jackson v. United States*, App. D.C., 441 A.2d 1000 (1982).

In creating local courts for the District of Columbia, Congress intended to alleviate the existing courts' burden under Article III of the U.S. Constitution. *District of Columbia v. Greater Wash. Cent. Labor Council*, App. D.C., 442 A.2d 110 (1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 486 (1983).

Congress' primary concern and objective in enacting the Court Reform Act was to relieve the District of Columbia federal courts of all local matters and to transfer such local matters to a local and unified court system for the District of Columbia. In *re Estate of Shutack*, App. D.C., 469 A.2d 427 (1983).

This section does not vitiate the essential character of the District as an arm of the sovereign United States. *Goode v. Markley*, 603 F.2d 973 (D.C. Cir. 1979), cert. denied, 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768 (1980).

Jurisdiction over local felonies. — Congress did not violate Article III of the Constitution of the United States by vesting jurisdiction over local felonies in the District of Columbia Superior Court. *Palmore v. United States*, App. D.C., 290 A.2d 573 (1972), aff'd, 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342 (1973).

Standing to determine constitutionality. — Taxpayers lacked standing to invoke jurisdiction of the federal district court to determine the constitutionality of portions of the District of Columbia Court Reform and Criminal Procedure Act. *Bradford v. Greene*, 440 F.2d 265 (D.C. Cir. 1971).

Imposition of punishments limited to those authorized by Congress. — Although the courts of the District of Columbia were created by Congress pursuant to its plenary power to legislate for the District, those courts may constitutionally impose only such punishments as Congress has seen fit to authorize. *Whalen v. United States*, 445 U.S. 684, 100 S. Ct. 1432, 63 L. Ed. 2d 715 (1980).

All Writs Act (28 U.S.C. § 1651) applies to the local District of Columbia courts. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

Superior Court may issue extraterritorial writs in aid of its authorized jurisdiction. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

Workmen's compensation for private employment sector in District of Columbia is a "local matter" over which the Council has authority to legislate and the local courts have jurisdiction to adjudicate. *District of Columbia v. Greater Wash. Cent. Labor Council*, App. D.C., 442 A.2d 110 (1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 486 (1983).

Fiduciary accounts cases may be transferred to Superior Court. — The intent of the Court Reform Act and the broad language of § 11-921(a)(5)(A) persuasively establish that the Act provides for the transfer of cases involving accounts by fiduciaries to the Superior Court. *In re Estate of Shutack*, App. D.C., 469 A.2d 427 (1983).

Cited in *District of Columbia v. Pryor*, App. D.C., 366 A.2d 141 (1976); *Jameson's Liquors, Inc. v. District of Columbia ABC Bd.*, App. D.C., 384 A.2d 412 (1978); *Hackney v. United States*, App. D.C., 389 A.2d 1336 (1978), cert. denied, 439 U.S. 1132, 99 S. Ct. 1054, 59 L. Ed. 2d 95 (1979); *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978); *Gillis v. United States*, App. D.C., 400 A.2d 311 (1979); *Corley v. United States*, App. D.C., 416 A.2d 713, cert. denied, 449 U.S. 1036, 101 S. Ct. 614, 66 L. Ed. 2d 499 (1980); *Wilson v. United States*, App. D.C., 424 A.2d 130 (1980); *McEachin v. United States*, App. D.C., 432 A.2d 1212 (1981); *Davis v. Bruner*, App. D.C., 441 A.2d 992 (1982); *Monarch Life Ins. Co. v. Elam*, 918 F.2d 201 (D.C. Cir. 1990); *Brown v. Edes Home*, 118 WLR 1277 (Super. Ct. 1990); *Colbert v. United States*, App. D.C., 601 A.2d 603 (1992).

§ 11-102. Status of District of Columbia Court of Appeals.

The highest court of the District of Columbia is the District of Columbia Court of Appeals. Final judgments and decrees of the District of Columbia Court of Appeals are reviewable by the Supreme Court of the United States in accordance with section 1257 of title 28, United States Code. (July 29, 1970, 84 Stat. 475, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-102.)

Court not bound by constitutional mandates. — The District of Columbia Court of Appeals is not bound by the mandates of Article III of the U.S. Constitution, since it was created by Congress as an Article I court. *Lee v. District of Columbia Bd. of Appeals & Review*, App. D.C., 423 A.2d 210 (1980).

Court of Appeals akin to state supreme court. — The District of Columbia Court of Appeals' status is that of a state supreme court. *Hickey v. District of Columbia Court of Appeals*, 457 F. Supp. 584 (D.D.C. 1978), reversed on other grounds, 661 F.2d 1295 (D.C. Cir. 1981).

And can exercise own judgment on constitutional questions. — The District of Columbia Court of Appeals, as the highest court of District of Columbia, can exercise its own judgment on a federal constitutional question until that question is answered by the Supreme Court of the United States. *M.A.P. v. Ryan*, App. D.C., 285 A.2d 310 (1971).

Decision of United States Court of Appeals prior to 1970 Reorganization Act is controlling. — Law established by the United States Court of Appeals for the District of Columbia, when it was functioning as the highest court for the District, is controlling, but a conflicting decision by the United States Court of Appeals for the District of Columbia, coming

after the 1970 Reorganization Act, is not controlling. *Luck v. B & O R.R.*, 352 F. Supp. 331 (D.D.C. 1972), modified, 510 F.2d 663 (D.C. Cir. 1974).

But subsequent decision is not binding. — Where the 1970 Reorganization Act eliminated the power of the United States Court of Appeals to review judgments and decrees of the District of Columbia Court of Appeals as of a certain date, a subsequent decision of the United States Court of Appeals is entitled to great respect, but is not binding on the District of Columbia Court of Appeals. *M.A.P. v. Ryan*, App. D.C., 285 A.2d 310 (1971).

The Superior Court is not bound by a decision of the United States Court of Appeals released subsequent to the effective date of the Court Reorganization Act. *Bethea v. United States*, App. D.C., 365 A.2d 64 (1976), cert. denied, 433 U.S. 911, 97 S. Ct. 2979, 53 L. Ed. 2d 1095 (1977).

Following the adoption of the District of Columbia Court Reform and Criminal Procedure Act of 1970, the United States Court of Appeals for the District of Columbia is no longer the final expositor of the local law of the District. *United States v. Peterson*, 483 F.2d 1222 (D.C. Cir.), cert. denied, 414 U.S. 1007, 94 S. Ct. 367, 38 L. Ed. 2d 244 (1973).

Even on constitutional issue. — A decision of the United States Court of Appeals for the District of Columbia Circuit, subsequent to the 1970 court reorganization, is not binding on the District of Columbia Court of Appeals, even where constitutional issue is presented. *United States v. Simmons*, App. D.C., 302 A.2d 728 (1973).

Or where leave to appeal granted prior to effective date. — Opinion which interpreted the D.C. Minimum Wage Act and which was published by the United States Court of Appeals for the District of Columbia after the effective date of the Judicial Reorganization Act, and at a time when the District of Columbia Court of Appeals had the final authority to interpret a District of Columbia enactment, did not constitute a controlling precedent for the District of Columbia Court of Appeals, even though leave to appeal in the case had been granted prior to effective date of the Judicial Reorganization Act. *District of Columbia v. Schwerman Trucking Co.*, App. D.C., 327 A.2d 818 (1974).

A decision of United States Court of Appeals constituted the law of the case since it had jurisdiction to review a decision of District of Columbia Court of Appeals when the decision of District of Columbia Court of Appeals was rendered and when the petition for allowance of appeal was filed, but where the decision was rendered after the effective date of the statute providing that decisions of District of Columbia Court of Appeals would no longer be subject to review by United States Court of Appeals, the decision would not constitute a binding precedent on future cases in District of Columbia Court of Appeals. *District of Columbia v. Smith*, App. D.C., 297 A.2d 787 (1972).

Although deference will be given to reasonable interpretation of federal legislation. — The District of Columbia Court of Appeals will give deference to a federal decision constituting a reasonable interpretation of federal legislation of nationwide applicability. *Small v. United States*, App. D.C., 304 A.2d 641 (1973), overruled on other grounds, *Dorszynski v. United States*, 418 U.S. 424, 94 S. Ct. 3042, 41 L. Ed. 2d 855 (1974).

Federal courts to give deference to decisions of Court of Appeals. — The policy underlying the District of Columbia Court Reorganization Act of 1970 requires that great deference be given by a federal district court to decisions of the District of Columbia Court of Appeals interpreting local statutes. *M.A.S., Inc. v. Van Curler Broadcasting Corp.*, 357 F. Supp. 686 (D.D.C. 1973).

But not in circumstances where Court of Appeals would not follow decision. — The United States District Court for the District of Columbia would not follow a decision of the District of Columbia Court of Appeals where, in

view of factors not considered in the earlier opinion of the District of Columbia Court of Appeals, it appeared that the District of Columbia Court of Appeals itself would not follow that decision. *M.A.S., Inc. v. Van Curler Broadcasting Corp.*, 357 F. Supp. 686 (D.D.C. 1973).

United States District Court is without authority to review final determinations of District of Columbia Court of Appeals in judicial proceedings. Review of such determinations can be obtained only in the Supreme Court. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).

Decision of Court of Appeals held reviewable by United States Supreme Court only by certiorari. — A decision by the District of Columbia Court of Appeals is not reviewable by direct appeal to the United States Supreme Court, but only by writ of certiorari, because a law applicable only in the District of Columbia is not a "statute of the United States" within the meaning of 28 U.S.C. § 1257. *Key v. Doyle*, 434 U.S. 59, 98 S. Ct. 280, 54 L. Ed. 2d 238 (1977).

Appeal of Court of Appeals denial of waiver of bar admission rule. — Respondents' complaints that the District of Columbia Court of Appeals acted arbitrarily and capriciously in denying their petitions for waiver of bar admission rule, requiring applicants to have graduated from an approved law school, and that the court acted unreasonably and discriminatorily in denying their petitions in view of its former policy of granting waivers to graduates of unaccredited law schools, required the United States District Court to review a final judicial decision of the highest court of a jurisdiction in a particular case. Because allegations are inextricably intertwined with the District of Columbia Court of Appeals' decisions, in judicial proceedings to deny the respondents' petitions, the District Court does not have jurisdiction over those complaints. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).

Obligation to raise standing in administrative appeal. — Because Congress has so restricted the class of persons who may appeal an administrative decision to the Court of Appeals, appellate jurisdiction over the subject matter on review is contingent upon petitioners' right to prosecute the appeal. Therefore, the appellate court is obliged to raise the issue of petitioners' standing *sua sponte*. *Lee v. District of Columbia Bd. of Appeals & Review*, App. D.C., 423 A.2d 210 (1980).

Child support guidelines. — Superior Court Child Support Guideline Committee has authority to establish support guidelines in the absence of legislation, but Court of Appeals is the final arbiter of substantive child support

law. *Fitzgerald v. Fitzgerald*, App. D.C., 566 A.2d 719 (1989).

Cited in *Lee v. Flintkote Co.*, 593 F.2d 1275 (D.C. Cir. 1979); *Davis v. Bruner*, App. D.C., 441 A.2d 992 (1982); *United States v. Patterson*, 111 WLR 73 (Super. Ct. 1983); *In re Nace*, App. D.C., 490 A.2d 1120 (1985); *Ferreira v. District*

of Columbia Dep't of Emp. Servs., App. D.C., 531 A.2d 651 (1987); *Meiggs v. Associated Bldrs., Inc.*, App. D.C., 545 A.2d 631 (1988); *United States v. Edmond*, 924 F.2d 261 (D.C. Cir.), cert. denied, — U.S. —, 112 S. Ct. 125, 116 L. Ed. 2d 92 (1991).

CHAPTER 3. UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Sec.

11-301. Jurisdiction of appeals from the District of Columbia Court of Appeals.

§ 11-301. Jurisdiction of appeals from the District of Columbia Court of Appeals.

In addition to its jurisdiction as a United States court of appeals and any other jurisdiction conferred on it by law, the United States Court of Appeals for the District of Columbia Circuit has jurisdiction of appeals from judgments of the District of Columbia Court of Appeals —

(1) with respect to violations of criminal laws of the United States which are not applicable exclusively to the District of Columbia if a petition for the allowance of an appeal from that judgment is filed within ten days after its entry; or

(2) entered before the effective date of the District of Columbia Court Reorganization Act of 1970 in any other case if a petition for the allowance of an appeal from that judgment is filed within ten days after its entry. (July 29, 1970, 84 Stat. 476, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-301.)

References in text. — “The effective date of the District of Columbia Court Reorganization Act of 1970,” referred to in paragraph (2) of this section, means, as set forth in § 199(c) of the Act, the first day of the seventh calendar month which began after the enactment of the Act.

Section is transitional provision. — The possibility of review under paragraph (1) of this section is nearing extinction, since that paragraph, like paragraph (2), is a transitional provision which permits the United States Court of Appeals to review decisions of the District of Columbia Court of Appeals only in cases involving a federal offense tried in the

Superior Court, and the Superior Court has not had jurisdiction of prosecutions of that type since the effective date of the Court Reform Act. *Thompson v. United States*, 548 F.2d 1031 (D.C. Cir. 1976).

Paragraph (1) applicable only to federal misdemeanors. — Paragraph (1) of this section permits review of decisions of the District of Columbia Court of Appeals only in cases involving federal misdemeanors. *Thompson v. United States*, 548 F.2d 1031 (D.C. Cir. 1976).

Cited in *Davis v. Bruner*, App. D.C., 441 A.2d 992 (1982); *Bond v. Texaco, Inc.*, 647 F. Supp. 1135 (D.D.C. 1986).

CHAPTER 5. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

*Subchapter I. Jurisdiction.**Subchapter II. Auditor.*

Sec.

11-501. Civil jurisdiction.

11-502. Criminal jurisdiction.

11-503. Removal of cases from the Superior Court of the District of Columbia.

Sec.

11-521. Appointment of Auditor.

*Subchapter I. Jurisdiction.***§ 11-501. Civil jurisdiction.**

In addition to its jurisdiction as a United States district court and any other jurisdiction conferred on it by law, the United States District Court for the District of Columbia has jurisdiction of the following:

(1) Any civil action or other matter begun in the court before the effective date of the District of Columbia Court Reorganization Act of 1970 other than any matter over which the Superior Court of the District of Columbia takes jurisdiction under section 11-921(a)(4)(G) or 11-921(a)(5)(B).

(2) During the eighteen-month period beginning on such effective date, any civil action or other matter which is brought under —

(A) chapter 3 of title 21 (relating to gifts to minors);

(B) chapter 5 of title 21 (relating to hospitalization of the mentally ill);

(C) chapter 7 of title 21 (relating to property of the mentally ill);

(D) chapter 11 of title 21 (relating to commitment and maintenance of substantially retarded persons);

(E) chapter 13 of title 21 (relating to appointment of committees for alcoholics and addicts); or

(F) chapter 15 of title 21 (relating to appointment of conservators).

(3) During the thirty-month period beginning on such effective date, any civil action or other matter —

(A) which is brought under chapter 29 of title 16 (relating to partition and assignment of dower);

(B) which would have been within the jurisdiction of the Orphans Court of Washington County, District of Columbia, before June 21, 1870;

(C) relating to the execution or validity of wills devising real property within the District of Columbia, and of wills and testaments properly presented for probate in the United States District Court for the District of Columbia, and the admission to probate and recording of those wills;

(D) relating to the proof of wills of either personal or real property and the revocation of probate of wills for cause;

(E) involving the granting and revocation for cause of letters testamentary, letters of administration, letters ad colligendum and letters of guardianship, and the appointment of successors to persons whose letters have been revoked;

(F) involving the hearing, examination, and issuance of decrees upon accounts, claims, and demands existing between executors or administrators

and legatees or persons entitled to a distributive share of an interstate estate, or between wards and their guardians;

(G) involving the enforcement of the rendition of inventories and accounts by executors, administrators, collectors, guardians, and trustees required to account to the court;

(H) involving the enforcement of distribution of estates by executors and administrators and the payment or delivery by guardians of money or property belonging to their wards; or

(I) otherwise within the probate jurisdiction of the court on the day before such effective date.

(4) Any civil action (other than a matter over which the Superior Court of the District of Columbia has jurisdiction under paragraph (3) or (4) of section 11-921(a)) begun in the court during the thirty-month period beginning on such effective date wherein the amount in controversy exceeds \$50,000. (July 29, 1970, 84 Stat. 476, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-501.)

Section references. — This section is referred to in §§ 1-1211, 11-921, and 16-601.

References in text. — “The effective date of the District of Columbia Court Reorganization Act of 1970,” referred to in this section, means, as set forth in § 199(c) of the Act, the first day of the seventh calendar month which began after the enactment of the Act.

“Chapter 7 of title 21,” referred to in paragraph 2(C), was repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

“Chapter 13 of title 21,” referred to in paragraph (2)(E), was repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

“Chapter 15 of title 21,” referred to in paragraph (2)(F), was repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

Meaning of “civil action”. — The phrase “civil action” in paragraph (4) of this section has the same broad meaning that it has in the Federal Rules of Civil Procedure. *Rieser v. District of Columbia*, 580 F.2d 647 (D.C. Cir. 1978).

Jurisdiction retained in mental health proceeding. — Where a proceeding by a person previously committed to a mental hospital is a part of 2 commitment proceedings begun in the United States District Court prior to the effective date of the Court Reorganization Act, the District Court has jurisdiction over a later petition to have the commitments declared illegal and vacated despite the fact that the Court Reorganization Act vested exclusive jurisdiction over mental health matters in the Superior Court. *In re Brown*, 68 F.R.D. 172 (D.D.C. 1975).

Third-party practice within federal courts' jurisdiction. — Third-party practice generated in the natural course of \$50,000-plus suits under paragraph (4) of this section remains within the jurisdiction of the United

States courts for the duration of the third-party practice and the original suit. *Rieser v. District of Columbia*, 580 F.2d 647 (D.C. Cir. 1978).

Where a plaintiff's complaint against a third-party defendant formed an integral part of a civil action brought for the purpose of assigning liability and awarding damages, and that action had commenced with the filing in the District Court of an original complaint during the 30-month period under paragraph (4) of this section, the third-party practice fell within the District Court's local jurisdiction under this section. *Rieser v. District of Columbia*, 580 F.2d 647 (D.C. Cir. 1978).

Jurisdiction over ejectment proceedings in Superior Court. — The intent of the Court Reform Act was to vest exclusive jurisdiction over all ejectment proceedings in the Superior Court, even those brought by the United States. *Herian v. United States*, 363 F. Supp. 287 (D.D.C. 1973).

Jurisdiction obtained pursuant to paragraph (1). — See *Common Cause v. Democratic Nat'l Comm.*, 333 F. Supp. 803 (D.D.C. 1971).

And pursuant to paragraph (3). — See *National Sav. & Trust Co. v. Rosendorf*, 559 F.2d 837 (D.C. Cir. 1977).

And pursuant to paragraph (4). — See *Montecatini Edison, S.P.A. v. Zeigler*, 486 F.2d 1279 (D.C. Cir. 1973); *Honey v. George Hyman Constr. Co.*, 63 F.R.D. 443 (D.D.C. 1974).

Partition actions and matters incidental to real property actions. — Partition actions and other matters incidental to real property actions are considered local civil actions and are no longer within the jurisdiction of the United States District Court. *Coll v. Coll*, 690 F. Supp. 1085 (D.D.C. 1988).

Jurisdiction excludes actions related to trustees. — The exception under the Court

Reorganization Act of 1970 for matters to be retained by the District Court explicitly excludes actions related to the filing of accounts and inventories by trustees. *Shutack v. Shutack*, 516 F. Supp. 219 (D.D.C. 1981).

Matters relating to the appointment, compensation, and duties of trustees are purely local matters, and, by the Court Reorganization Act of 1970, Congress intended to terminate the anomaly in the District of federal trial and appellate judges being required to devote their time and energy to matters of a purely local nature. *Shutack v. Shutack*, 516 F. Supp. 219 (D.D.C. 1981).

Jurisdiction over trust cases existing before effective date of District of Columbia Court Reorganization Act of 1970. —

The District of Columbia Court Reorganization Act of 1970 did not vest in the Superior Court trust cases in existence before the effective date of the Act, nor vest any jurisdiction at all in the Probate Division of Superior Court over trust cases. *Chumbris v. Chaconas*, 110 WLR 1521 (Super. Ct. 1982).

Cited in *Sullivan v. Murphy*, 478 F.2d 938 (D.C. Cir.), cert. denied, 414 U.S. 880, 94 S. Ct. 162, 38 L. Ed. 2d 125 (1973); *Safer v. Perper*, 569 F.2d 87 (D.C. Cir. 1977); *Husovsky v. United States*, 590 F.2d 944 (D.C. Cir. 1978); *Carr v. District of Columbia*, 646 F.2d 599 (D.C. Cir. 1980); *Redwood v. Council of D.C.*, 679 F.2d 931 (D.C. Cir. 1982); *In re Estate of Shutack*, App. D.C., 469 A.2d 427 (1983).

§ 11-502. Criminal jurisdiction.

In addition to its jurisdiction as a United States district court and any other jurisdiction conferred on it by law, the United States District Court for the District of Columbia has jurisdiction of the following:

(1) Any criminal case begun in the court by the return of an indictment or the filing of an information before the effective date of the District of Columbia Court Reorganization Act of 1970.

(2) Any criminal case which is begun in the court by the return of an indictment or the filing of an information during the eighteen-month period beginning on such effective date and which —

(A) involves a violation of any one of the following sections of the Act entitled “An Act to establish a code of law for the District of Columbia”, approved March 3, 1901:

(i) section 809 (D.C. Code, sec. 22-201) (relating to abortion),

(ii) section 803 (D.C. Code, sec. 22-501) (relating to assault with intent to kill, rob, rape, or poison),

(iii) section 823 (a) (D.C. Code, sec. 22-1801(a)) (relating to burglary in the first degree),

(iv) section 812 (D.C. Code, sec. 22-2101) (relating to kidnaping),

(v) sections 798 through 802 (D.C. Code, secs. 22-2401 through 22-2405) (relating to murder and manslaughter),

(vi) section 808 (D.C. Code, sec. 22-2801) (relating to rape),

(vii) section 810 (D.C. Code, sec. 22-2901) (relating to robbery); or

(B) involves any other offense under any law applicable exclusively to the District of Columbia which offense is joined in such information or indictment with any of the offenses listed in subparagraph (A).

(3) Any offense under any law applicable exclusively to the District of Columbia which offense is joined in the same information or indictment with any Federal offense. (July 29, 1970, 84 Stat. 477, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-502.)

Section references. — This section is referred to in §§ 11-923 and 23-311.

References in text. — “The effective date of the District of Columbia Court Reorganization

Act of 1970," referred to in paragraphs (1) and (2) of this section, means, as set forth in § 199(c) of the Act, the first day of the seventh calendar month which began after the enactment of the Act.

Purpose of section. — This section was enacted solely for the purpose of eliminating the procedural difficulties of trying a single defendant for related federal and D.C. Code offenses in 2 courts. *United States v. Garnett*, 653 F.2d 558 (D.C. Cir. 1981).

Congress intended to give power to try properly-joined local offense. — So long as an indictment properly joins federal and local offenses under Fed. R. Crim. P. 8, Congress intended to give the federal court power to try the local offense. *United States v. Kember*, 648 F.2d 1354 (D.C. Cir. 1980).

Test for determining continuing federal jurisdiction over D.C. Code offenses. — When D.C. Code offenses are properly joined with federal offenses, the federal district court's jurisdiction over the D.C. Code offenses does not evaporate once the federal offenses fade out of the picture. Instead, the court must determine whether continued jurisdiction over the D.C. Code offenses would promote a federal interest or "judicial economy and litigational convenience." *United States v. Edmond*, 738 F. Supp. 572 (D.D.C. 1990).

Proper joinder required for federal jurisdiction over local charge. — Proper joinder of local and federal offenses is a necessary prerequisite to proceeding with trial in federal court upon any local charge. *United States v. Koritko*, 870 F.2d 738 (D.C. Cir. 1989).

Where the information set forth local charges, and a later-supplanted indictment contained solely federal charges, no single charging document joined the federal and local offenses, and the federal district court had no discretion to retain jurisdiction over the remaining local charges. *United States v. Koritko*, 870 F.2d 738 (D.C. Cir. 1989).

When District Court should decline to try local offenses. — The United States District Court for the District of Columbia should decline to try local offenses when those offenses have been disassociated from any federal charges prior to trial, and retention of the case would not comport with the responsibilities of the District Court with respect to matters of federal concern. *United States v. Kember*, 648 F.2d 1354 (D.C. Cir. 1980).

Paragraph (3) joinder must be neither improper nor prejudicial. — The joinder mentioned in paragraph (3) of this section must be neither improper under Rule 8 of the Federal Rules of Criminal Procedure nor prejudicial under Rule 14. *United States v. Kember*, 487 F. Supp. 1340 (D.D.C. 1980), *aff'd*, 685 F.2d 451 (D.C. Cir.), *cert. denied*, 459 U.S. 832, 103 S. Ct. 73, 74 L. Ed. 2d 72 (1982).

Or else jurisdiction will not be conferred. — Where the crimes of assault with intent to rape and purse snatching occurred within a short time of each other and in approximately the same location but were not otherwise related, the mere temporal and special proximity cannot justify the characterization of the assault and robbery as different parts of the same series of acts or transactions, and joinder of the robbery count with the other charges was improper and conferred upon the District Court no jurisdiction over the alleged D.C. Code offense of robbery. *United States v. Jackson*, 562 F.2d 789 (D.C. Cir. 1977).

Jurisdiction over local offense properly attained through joinder is not lost due to disposition of federal count. — Where federal and local offenses have been properly joined in 1 indictment and jeopardy has attached, the District Court may proceed to a determination of the local offenses regardless of any intervening disposition of the federal counts. *United States v. Shepard*, 515 F.2d 1324 (D.C. Cir. 1975).

Or because prosecution of federal offense is prevented by treaty. — The United States District Court is not ousted of its jurisdiction over District of Columbia Code offenses by the fact that a treaty prevents the prosecution of the United States Code offenses, where the local federal offenses are "joined in the same indictment" within the meaning of paragraph (3) of this section. *United States v. Kember*, 487 F. Supp. 1340 (D.D.C. 1980), *aff'd*, 685 F.2d 451 (D.C. Cir.), *cert. denied*, 459 U.S. 832, 103 S. Ct. 73, 74 L. Ed. 2d 72 (1982).

Jurisdiction is divested when local charge is severed to avoid prejudice. — Even if the joinder of a District of Columbia Code offense of robbery with federal offenses was proper, the District Court divested itself of jurisdiction over the robbery count when it granted defendants' pretrial motion to sever the robbery charge in order to avoid the possibly prejudicial atmosphere of a single trial. *United States v. Jackson*, 562 F.2d 789 (D.C. Cir. 1977).

Remaining matters of legitimate federal concern where federal charges eliminated. — A federal court must dismiss a criminal prosecution when federal charges have faded from the case prior to trial, leaving only District of Columbia offenses for adjudication, unless the court determines, in its discretion, that retention of the case is warranted by remaining matters of legitimate federal concern. *United States v. Kember*, 685 F.2d 451 (D.C. Cir.), *cert. denied*, 459 U.S. 832, 103 S. Ct. 73, 74 L. Ed. 2d 72 (1982).

Actions which constitute a violation of both federal and District laws can properly be the subject of a single trial in the United States District Court under a joint indictment.

United States v. Bridgeman, 523 F.2d 1099 (D.C. Cir. 1975), cert. denied, 425 U.S. 961, 96 S. Ct. 1743, 48 L. Ed. 2d 206 (1976); United States v. Jones, 527 F.2d 817 (D.C. Cir. 1975); United States v. Alston, 609 F.2d 531 (D.C. Cir. 1979), cert. denied, 445 U.S. 918, 100 S. Ct. 1281, 63 L. Ed. 2d 603 (1980).

Cited in United States v. Yates, 524 F.2d 1282 (D.C. Cir. 1975); Rieser v. District of Columbia, 580 F.2d 647 (D.C. Cir. 1978); United

States v. Wright, 610 F.2d 930 (D.C. Cir. 1979); United States v. Anderson, 670 F.2d 328 (D.C. Cir. 1982); Allen v. District of Columbia Hacker's License Appeal Bd., App. D.C., 471 A.2d 271 (1984); United States v. Greene, 834 F.2d 1067 (D.C. Cir. 1987), cert. denied, — U.S. —, 108 S. Ct. 2908, 101 L. Ed. 2d 940 (1988); United States v. Montgomery, 815 F. Supp. 7 (D.D.C. 1993).

§ 11-503. Removal of cases from the Superior Court of the District of Columbia.

A civil action or criminal prosecution in the Superior Court of the District of Columbia is removable to the United States District Court for the District of Columbia in accordance with chapter 89 of title 28, United States Code. (July 29, 1970, 84 Stat. 478, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-503.)

Right to removal concomitant with removal in state courts. — Defendants in the District of Columbia have a right to removal concomitant with defendants sued in state courts. *District of Columbia ex rel. John Driggs Co. v. Ranger Constr. Co.*, 394 F. Supp. 801 (D.D.C. 1974).

Removal brings breach of District statutes within pendent jurisdiction. — Where a claim of right arising under federal law is properly removed from the Superior Court to the District Court, the county of the action which alleges a breach of District of Columbia statutes comes within the District Court's pendent jurisdiction. *Papadopoulos v. Sheraton Park Hotel*, 410 F. Supp. 217 (D.D.C. 1976).

Action remanded to Superior Court for failure to meet jurisdictional requirements. — Where action which had been removed to the District Court on the basis of diversity of citizenship would support at most only a nominal recovery far less than the req-

uisite jurisdictional amount of \$10,000, the action would be remanded to the Superior Court. *Davis v. Licari*, 434 F. Supp. 23 (D.D.C. 1977).

Exclusive jurisdiction over all ejectment proceedings is vested in the Superior Court, even those brought by the United States. *Herian v. United States*, 363 F. Supp. 287 (D.D.C. 1973).

Criminal proceeding not removed. — Criminal proceedings against a defendant who requested civil commitment in lieu of prosecution pursuant to the Narcotic Addict Rehabilitation Act are not required to be transferred from the Superior Court to the District Court. *Banks v. United States*, App. D.C., 359 A.2d 8 (1976).

Removal permitted. — See *Day v. Avery*, 548 F.2d 1018 (D.C. Cir. 1976), cert. denied, 431 U.S. 908, 97 S. Ct. 1706, 52 L. Ed. 2d 394 (1977).

Subchapter II. Auditor.

§ 11-521. Appointment of Auditor.

For so long as the business of the court may require, the United States District Court for the District of Columbia may appoint an Auditor for the court. (July 29, 1970, 84 Stat. 478, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-521.)

Cited in *Cannon v. United States*, 645 F.2d 1128 (D.C. Cir. 1981).

CHAPTER 7. DISTRICT OF COLUMBIA COURT OF APPEALS.

Subchapter I. Continuation and Organization.

Sec.

- 11-701. Continuation of court; court of record; seal.
- 11-702. Composition.
- 11-703. Judges; service; compensation.
- 11-704. Oath of judges.
- 11-705. Assignment of judges; divisions; hearings.
- 11-706. Absence, disability, or disqualification of judges; vacancies; quorum.
- 11-707. Assignment of judges to and from Superior Court.
- 11-708. Clerks and secretaries for judges.
- 11-709. Reports.

Subchapter II. Jurisdiction.

Sec.

- 11-721. Orders and judgments of the Superior Court.
- 11-722. Administrative orders and decisions.
- 11-723. Certification of questions of law.

Subchapter III. Miscellaneous Provisions.

- 11-741. Contempt powers.
- 11-742. Oaths, affirmations, and acknowledgments.
- 11-743. Rules of court.
- 11-744. Judicial conference.

Subchapter I. Continuation and Organization.

§ 11-701. Continuation of court; court of record; seal.

(a) The District of Columbia Court of Appeals (hereafter in this subchapter referred to as the “court”) shall continue as a court of record in the District of Columbia.

(b) The court shall have a seal. (July 29, 1970, 84 Stat. 478, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-701.)

Cross references. — As to continuation of District of Columbia court system, see § 718 of Appendix to this title.

§ 11-702. Composition.

The court shall consist of a chief judge and eight associate judges. (July 29, 1970, 84 Stat. 478, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-702.)

§ 11-703. Judges; service; compensation.

(a) The chief judge and the judges of the court shall serve in accordance with chapter 15 of this title.

(b) Judges of the court shall be compensated at the rate prescribed by law for judges of the United States courts of appeals. The chief judge, while serving in that position, shall receive an additional \$500 per annum. (July 29, 1970, 84 Stat. 479, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-703; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 16(a); June 13, 1994, Pub. L. 103-266, § 1(b)(1), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (b) to remove gender-specific references.

§ 11-704. Oath of judges.

Each judge, when appointed, shall take the oath prescribed for judges of courts of the United States. (July 29, 1970, 84 Stat. 479, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-704.)

§ 11-705. Assignment of judges; divisions; hearings.

(a) Judges of the court shall sit on the court and its divisions in such order and at such times as the court directs.

(b) Cases and controversies shall be heard and determined by divisions of the court unless a hearing or a rehearing before the court in banc is ordered. Each division of the court shall consist of three judges.

(c) A hearing before the court in banc may be ordered by a majority of the judges of the court in regular active service. The court in banc for a hearing shall consist of the judges of the court in regular active service.

(d) A rehearing before the court in banc may be ordered by a majority of the judges of the court in regular active service. The court in banc for a rehearing shall consist of the judges of the court in regular active service, except that a retired judge may sit as a judge of the court in banc in the rehearing of a case or controversy if the judge sat on the court or a division of the court at the original hearing thereof. (July 29, 1970, 84 Stat. 479, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-705; June 13, 1994, Pub. L. 103-266, § 1(b)(2), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (d) to remove gender-specific references.

Court not bound by constitutional mandates. — The District of Columbia Court of Appeals is not bound by the mandates of Article III of the U.S. Constitution, since it was created by Congress as an Article I court. *Lee v. District of Columbia Bd. of Appeals & Review*, App. D.C., 423 A.2d 210 (1980).

Limits of “cases and controversies.” — Although Court of Appeals is not governed by standing requirements under Article III of the U.S. Constitution, the court will look to federal jurisprudence to define the limits of “cases and controversies” that section (b) empowers it to hear. *Community Credit Union Servs., Inc. v.*

Federal Express Servs. Corp., App. D.C., 534 A.2d 331 (1987).

Plaintiff may assert only interests that fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. *Community Credit Union Servs., Inc. v. Federal Express Servs. Corp.*, App. D.C., 534 A.2d 331 (1987).

Cited in *Arnold v. United States*, App. D.C., 436 A.2d 1302 (1981); *Riddick v. William M. Sinclair Co.*, App. D.C., 481 A.2d 1306 (1984); *Mozingo v. United States*, App. D.C., 503 A.2d 1238 (1986); *In re A.C.*, App. D.C., 573 A.2d 1235 (1990); *Atchison v. District of Columbia*, App. D.C., 585 A.2d 150 (1991); *Horton v. United States*, App. D.C., 591 A.2d 1280 (1991).

§ 11-706. Absence, disability, or disqualification of judges; vacancies; quorum.

(a) When the chief judge of the court is absent or disabled, the chief judge's duties shall devolve upon and be performed by such associate judge as the chief judge may designate in writing. In the event that the chief judge is (1) disqualified or suspended, or (2) unable or fails to make such a designation, the chief judge's duties shall devolve upon and be performed by the associate judges of the court according to the seniority of their original commissions.

(b) A chief judge whose term as chief judge has expired shall continue to serve until redesignated or until the chief judge's successor has been designated. When there is a vacancy in the position of chief judge, the position shall be filled temporarily as provided in subsection (a).

(c) Two judges shall constitute a quorum of a division of the court, and six judges shall constitute a quorum of the court sitting in banc. (July 29, 1970, 84 Stat. 479, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-706; June 13, 1994, Pub. L. 103-266, §§ 1(b)(3), (4), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (a) and (b) to remove gender-specific references.

§ 11-707. Assignment of judges to and from Superior Court.

(a) The chief judge of the District of Columbia Court of Appeals may designate and assign temporarily one or more judges of the Superior Court of the District of Columbia to serve on the District of Columbia Court of Appeals or a division thereof whenever the business of the District of Columbia Court of Appeals so requires. Such designations or assignments shall be in conformity with the rules or orders of the District of Columbia Court of Appeals.

(b) Upon presentation of a certificate of necessity by the chief judge of the Superior Court of the District of Columbia, the chief judge of the District of Columbia Court of Appeals may designate and assign temporarily one or more judges of the District of Columbia Court of Appeals to serve as a judge of the Superior Court of the District of Columbia. (July 29, 1970, 84 Stat. 479, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-707.)

Section references. — This section is referred to in § 11-908.

Cited in *Reid v. District of Columbia*, App. D.C., 399 A.2d 1293 (1978); *Davis v. United States*, App. D.C., 397 A.2d 951 (1979); *In re Y.G.*, App. D.C., 399 A.2d 65 (1979); *Smith v. District of Columbia*, App. D.C., 399 A.2d 213 (1979); *Heller v. Buchbinder*, App. D.C., 399 A.2d 850 (1979); *Sousa v. United States*, App. D.C., 400 A.2d 1036, cert. denied, 444 U.S. 981, 100 S. Ct. 484, 62 L. Ed. 2d 408 (1979); *Union Travel Assocs. v. International Assocs.*, App. D.C., 401 A.2d 105 (1979); *Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 402 A.2d 36 (1979); *Beck v. United States*, App. D.C., 402 A.2d 418 (1979); *Morgan v. United States*, App. D.C., 402 A.2d 598 (1979); *Hall v. Cafritz*, App. D.C., 402 A.2d 828 (1979); *Johnson v. United States*, App. D.C., 404 A.2d 162 (1979); *Jackson v. United States*, App. D.C., 404 A.2d 911 (1979); *Bronson v. Borst*, App.

D.C., 404 A.2d 960 (1979); *Smallwood v. United States*, App. D.C., 407 A.2d 675 (1979); *Gueory v. District of Columbia*, App. D.C., 408 A.2d 967 (1979); *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 409 A.2d 1067 (1979); *Hudson v. Ashley*, App. D.C., 411 A.2d 963 (1980); *Powers v. United States*, App. D.C., 412 A.2d 1205 (1980); *Faunteroy v. United States*, App. D.C., 413 A.2d 1294 (1980); *Cooper v. United States*, App. D.C., 415 A.2d 528 (1980); *District Concrete Co. v. Bernstein Concrete Corp.*, App. D.C., 418 A.2d 1030 (1980); *Rogers v. United States*, App. D.C., 419 A.2d 977 (1980); *Carson v. United States*, App. D.C., 419 A.2d 996 (1980); *Johnson v. United States*, App. D.C., 420 A.2d 1214 (1980); *Blanchard v. District of Columbia*, App. D.C., 420 A.2d 1373 (1980); *Washington Ethical Soc'y v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 421 A.2d 14 (1980); *In re Burton*, App. D.C., 614 A.2d 46 (1992).

§ 11-708. Clerks and secretaries for judges.

Each judge may appoint and remove a personal secretary. The chief judge may appoint and remove three personal law clerks, and each associate judge may appoint and remove two personal law clerks. In addition, the chief judge may appoint and remove not more than three law clerks for the court. The law clerks appointed for the court shall serve as directed by the chief judge. (July 29, 1970, 84 Stat. 480, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-708; Dec. 31, 1975, 89 Stat. 1098, Pub. L. 94-191, § 1.)

§ 11-709. Reports.

Each judge shall submit to the chief judge such reports and data as the chief judge may request. Each judge shall submit a monthly written report to the chief judge and the Commission on Judicial Disabilities and Tenure which shall be in a form prescribed by the chief judge after consultation with the Commission and which shall set forth the following:

(1) The number of days' attendance in court of the judge during the month covered.

(2) The division of the court which the judge attended.

(3) The number of hours per day of the judge's attendance.

(4) The number and type of matters disposed of by the judge during the month covered.

(5) Such other data as the chief judge may require. (July 29, 1970, 84 Stat. 480, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-709; June 13, 1994, Pub. L. 103-266, §§ 1(b)(5), (6), 108 Stat. 713.)

Section references. — This section is referred to in § 11-1730. 266 amended (2) and (3) to remove gender-specific references.

Effect of amendments. — Public Law 103-

Subchapter II. Jurisdiction.

§ 11-721. Orders and judgments of the Superior Court.

(a) The District of Columbia Court of Appeals has jurisdiction of appeals from —

(1) all final orders and judgments of the Superior Court of the District of Columbia;

(2) interlocutory orders of the Superior Court of the District of Columbia—

(A) granting, continuing, modifying, refusing, or dissolving or refusing to dissolve or modify injunctions;

(B) appointing receivers, guardians, or conservators or refusing to wind up receiverships, guardianships, or the administration of conservators or to take steps to accomplish the purpose thereof; or

(C) changing or affecting the possession of property; and

(3) orders or rulings of the Superior Court of the District of Columbia appealed by the United States or the District of Columbia pursuant to section 23-104 or 23-111(d)(2).

(b) Except as provided in subsection (c) of this section, a party aggrieved by an order or judgment specified in subsection (a) of this section, may appeal therefrom as of right to the District of Columbia Court of Appeals.

(c) Review of judgments of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia and of judgments in the Criminal Division of that court where the penalty imposed is a fine of less than \$50 for an offense punishable by imprisonment of one year or less, or by fine of not more than \$1,000, or both, shall be by application for the allowance of an appeal, filed in the District of Columbia Court of Appeals.

(d) When a judge of the Superior Court of the District of Columbia in making in a civil case (other than a case in which a child, as defined in section 16-2301, is alleged to be delinquent, neglected, or in need of supervision) a ruling or order not otherwise appealable under this section, shall be of the opinion that the ruling or order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal from the ruling or order may materially advance the ultimate termination of the litigation or case, the judge shall so state in writing in the ruling or order. The District of Columbia Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from that ruling or order, if application is made to it within ten days after the issuance or entry of the ruling or order. An application for an appeal under this subsection shall not stay proceedings in the Superior Court of the District of Columbia unless the judge of that court who made such ruling or order or the District of Columbia Court of Appeals or a judge thereof shall so order.

(e) On the hearing of any appeal in any case, the District of Columbia Court of Appeals shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

(f) The District of Columbia Court of Appeals shall hear an appeal from an order of the Superior Court of the District of Columbia holding an individual in contempt and imposing the sanction of imprisonment on such individual in the course of a case for custody of a minor child not later than 60 days after such individual requests that an appeal be taken from that order. (July 29, 1970, 84 Stat. 480, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-721; Sept. 23, 1989, 103 Stat. 634, Pub. L. 101-97, § 3; June 13, 1994, Pub. L. 103-266, § 1(b)(7), 108 Stat. 713.)

Cross references. — As to provisions of District Charter relating to jurisdiction of Court of Appeals, see § 431 of Appendix to this title.

Section references. — This section is referred to in §§ 17-301 and 17-307.

Effect of amendments. — Public Law 103-266 amended (d) to remove gender-specific references.

Effective date. — Section 5 of Pub. L.

101-97 provided that the amendments made by §§ 2 and 3 shall apply with respect to any individual imprisoned before the expiration of the 18-month period that begins on the date of the enactment of this Act for disobedience of an order or for contempt committed in the presence of the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

"Final" construed. — For purposes of ap-

peal, an order is final only if it disposes of an entire case on the merits, leaving nothing for the court to do but execute the judgment it has rendered. *District of Columbia v. Tschudin*, App. D.C., 390 A.2d 986 (1978); *Burtoff v. Burtoff*, App. D.C., 390 A.2d 989 (1978); *Urciolo v. Urciolo*, App. D.C., 449 A.2d 287 (1982), overruled on other grounds, *In re Estate of Tran Van Chuong*, App. D.C., 623 A.2d 1154 (1993).

A decision in a criminal case is final for appellate purposes only when the litigation between parties is terminated and nothing remains but the enforcement by execution of what has been determined; to create finality in criminal case it is necessary that there be a judgment of conviction followed by a sentence. *West v. United States*, App. D.C., 346 A.2d 504 (1975).

A final order must dispose of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered. *Trilon Plaza Co. v. Allstate Leasing Corp.*, App. D.C., 399 A.2d 34 (1979); *Crown Oil & Wax Co. v. Safeco Ins. Co. of Am.*, App. D.C., 429 A.2d 1376 (1981); *Dameron v. Capitol House Assocs.*, App. D.C., 431 A.2d 580 (1981); *Mills v. Cosmopolitan Ins. Agency*, App. D.C., 442 A.2d 151 (1982).

For purposes of appeal, an order is final only if it disposes of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered. *Brown v. First Am. Title Ins. Co.*, App. D.C., 623 A.2d 1154 (1993).

To be reviewable, a judgment or decree must not only be final but also complete; that is, final not only as to all parties, but as to the whole subject matter and all the causes of action involved. *Brown v. First Am. Title Ins. Co.*, App. D.C., 623 A.2d 1154 (1993).

An action seeking an adjudication of paternity and support is not final for purposes of an appeal to the Court of Appeals until both the paternity issue and the support issue are finally resolved. *L.A.W. v. M.E.*, App. D.C., 606 A.2d 160 (1992).

"Final orders" not limited to final judgments terminating action. — The term "final orders" for the purposes of this section is not limited to final judgments which terminate an action. *Frost v. Peoples Drug Store, Inc.*, 327 A.2d 810 (1974); *United States v. Harrod*, App. D.C., 411 A.2d 1383 (1980); *Kleiboemer v. District of Columbia*, App. D.C., 458 A.2d 731, modified on other grounds, App. D.C., 466 A.2d 846 (1983), cert. denied, 465 U.S. 1024, 104 S. Ct. 1279, 79 L. Ed. 2d 683 (1984).

Final judgments are not limited to the last order in a proceeding. *District of Columbia v. Tschudin*, App. D.C., 390 A.2d 986 (1978).

Statutory right to appeal criminal conviction may not be indiscriminately de-

nied. — While there is no constitutional right to appeal a criminal conviction, once a statute confers an appellate right, it may not be indiscriminately denied. *Howell v. United States*, App. D.C., 455 A.2d 1371 (1983).

Conviction not final until appeal of right resolved. — A judgment of conviction is not considered final until any appeal of right which is filed has been resolved because the possibility for reversal endures until that point. *Howell v. United States*, App. D.C., 455 A.2d 1371 (1983).

Interlocutory order under § 16-309(d) is appealable as final order under the doctrine of practical finality. *In re R.M.G.*, App. D.C., 454 A.2d 776 (1982).

Court will not look at normal function of order. — For an order to be final for review purposes the court does not look at its name, its propriety, or its normal function. *Trilon Plaza Co. v. Allstate Leasing Corp.*, App. D.C., 399 A.2d 34 (1979).

But will analyze competing interests of parties and judicial system. — In determining whether an order is final, it is necessary to analyze the competing interests of the parties and the judicial system. *United States v. Harrod*, App. D.C., 411 A.2d 1383 (1980).

In determining the finality of an order, the pertinent needs of the judicial process must be considered. The expense and delay of piecemeal litigation must be balanced with the need for a just adjudication of individual rights. *Dameron v. Capitol House Assocs.*, App. D.C., 431 A.2d 580 (1981).

In determining finality, the appellate court is concerned not merely with the interests of the immediate parties but, more importantly, with those interests that pertain to the smooth functioning of the judicial system. *Crown Oil & Wax Co. v. Safeco Ins. Co. of Am.*, App. D.C., 429 A.2d 1376 (1981).

Examination of merits often necessary when determining appealability. — When determining the appealability of orders which potentially threaten irreparable harm, courts must often examine the merits of the underlying claim. *Dameron v. Capitol House Assocs.*, App. D.C., 431 A.2d 580 (1981).

Burden of persuasion. — It is well established that a party challenging an adverse judgment bears the heavy burden of persuading the Court of Appeals that the trial judge committed error. *Robinson v. Washington Internal Medicine Assocs.*, App. D.C., 647 A.2d 1140 (1994).

Case or controversy necessary. — The "case or controversy" requirement of Article III of the Constitution, has been adopted by the Court of Appeals for prudential reasons; therefore the Court will not normally decide questions that have become moot. *District of Colum-*

bia v. Group Ins. Admin., App. D.C., 633 A.2d 2 (1993).

"Controlling question of law." — The issue of nationwide relevance open for final determination only by the United States Supreme Court was one of preemption; that presented a "controlling question of law" within the meaning of subsection (d). W.R. Grace & Co. v. Galvagna, App. D.C., 633 A.2d 25 (1993).

Order stating sanction or quantum of relief treated as final. — When appellate courts have had to determine which order of the trial court is final and therefore appealable, the general rule is that the order stating the sanction, quantum of relief, or the like is the one with requisite finality. Trilon Plaza Co. v. Allstate Leasing Corp., App. D.C., 399 A.2d 34 (1979).

As is order which threatens integrity of judicial process. — Trial court orders which threaten the integrity of the judicial process may be treated as final for the purpose of review. Weisberg v. Williams, Connolly & Califano, App. D.C., 390 A.2d 992 (1978).

Judgment or decree must not only be final but also complete in order to be reviewable; that is, final not only as to all parties, but as to the whole subject matter and all the causes of action involved. Urciolo v. Urciolo, App. D.C., 449 A.2d 287 (1982), overruled on other grounds, In re Estate of Tran Van Chuong, App. D.C., 623 A.2d 1154 (1993).

Ordinarily, interlocutory order cannot be appealed. Jenkins v. Parker, App. D.C., 428 A.2d 367 (1981).

Collateral order doctrine. — A narrow but well-recognized exception to the rule against appeals from nonfinal orders is the collateral order doctrine; collateral orders are a small class of orders which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. Brown v. First Am. Title Ins. Co., App. D.C., 623 A.2d 1154 (1993).

The collateral order doctrine has 3 requirements, all of which must be met before an interlocutory order may be appealed: First, a trial court order must conclusively determine the disputed question; second, it must resolve an important issue completely separate from the merits of the action; third, it must be effectively unreviewable on appeal from a final judgment. Brown v. First Am. Title Ins. Co., App. D.C., 623 A.2d 1154 (1993).

Preliminary injunction. — A preliminary injunction is an extraordinary remedy, and the trial court's power to issue it should be exercised only after careful deliberation has persuaded it of the necessity for the relief. Fountain v. Kelly, App. D.C., 630 A.2d 684 (1993).

Divorce decree is a final order. — A divorce decree, insofar as it concerns the disposition of property and the divorce itself, is a "final order." Quarles v. Quarles, App. D.C., 353 A.2d 285, cert. denied, 429 U.S. 922, 97 S. Ct. 321, 50 L. Ed. 2d 290 (1976).

Denial of leave to intervene as of right is a final order appealable immediately to the Court of Appeals. Calvin-Humphrey v. District of Columbia, App. D.C., 340 A.2d 795 (1975).

Order of dismissal on grounds of forum non conveniens is clearly a final order and is properly appealable. Frost v. Peoples Drug Store, Inc., App. D.C., 327 A.2d 810 (1974).

Trial court's denial of pretrial motion for dismissal on grounds of forum non conveniens is a final order and appealable. Frost v. Peoples Drug Store, Inc., App. D.C., 327 A.2d 810 (1974).

A denial of a motion to dismiss based upon a claim of forum non conveniens is a final and an appealable order. District-Realty Title Ins. Corp. v. Goodrich, App. D.C., 328 A.2d 93 (1974); Crown Oil & Wax Co. v. Safeco Ins. Co. of Am., App. D.C., 429 A.2d 1376 (1981).

Order detaining juvenile pending trial. — Even though the juvenile did not file a notice of appeal from an order denying application to reconsider order detaining him pending trial within the 2-day period provided in § 16-2327 for interlocutory appeals, the appellate court had jurisdiction to review the order by viewing it as final as it relates to personal liberty. In re M.L. DeJ., App. D.C., 310 A.2d 834 (1973).

Order determining paternity. — An order determining paternity was deemed appealable as a final order. Murphy v. McCloud, App. D.C., 650 A.2d 202 (1994).

Order compelling witness to undergo psychiatric examination possesses sufficient attributes of finality to be appealable pursuant to subsection (a) of this section. United States v. Harrod, App. D.C., 411 A.2d 1383 (1980).

An order requiring a nonparty witness to undergo a psychiatric examination is not a final order and may not be appealed. United States v. Harrod, App. D.C., 428 A.2d 30 (1981).

Rule orders subject to appeal. — Superior Court Landlord and Tenant Rule 5(c) undertaking orders are subject to appeal as are orders with respect to injunctions under subsection (a)(2)(A). Penny v. Penny, App. D.C., 565 A.2d 587 (1989).

Sentence subject to modification by trial court is a final judgment and appealable. Butler v. United States, App. D.C., 379 A.2d 948 (1977).

Judgment later modified not appealable. — Order which nullified a previously existing judgment in favor of plaintiff and displaced it with one reflecting the modified credit ordered by the court was not the final; the unmodified judgment originally entered, from

which the parties' cross-appeals were taken (which no longer existed), was not final, therefore depriving the Court of Appeals of jurisdiction. *Dyer v. William S. Bergman & Assocs.*, App. D.C., 635 A.2d 1285 (1993).

Order granting civil mistrial or new trial. — An order granting a civil mistrial is not an appealable final order, nor is an order granting a new trial, at least if no lack of court "jurisdiction or power" is presented. *Hairlox Co. v. McDonald*, App. D.C., 557 A.2d 163 (1989).

Denial of motion for new trial. — A ruling by the trial court denying a motion for a new trial or a new fact-finding hearing constitutes an appealable order where the motion is based on newly discovered evidence. *In re E.G.C.*, App. D.C., 373 A.2d 903 (1977).

Denial of oral motion not appealable. — Where tenant orally moved to set aside eviction, and where the judge denied the request and advised counsel to file a written motion, judge's denial was not a final order. *Gause v. C.T. Mgt., Inc.*, App. D.C., 637 A.2d 434 (1994).

Order for expungement of arrest record. — Where the extent to which records were ordered expunged of arrest was clear, and nothing remained to be done other than necessary ministerial steps to gather records together and place them under seal, and no further order of court was then contemplated, an order that the arrest record be expunged was a "final order." *Irani v. District of Columbia*, App. D.C., 292 A.2d 804 (1972).

Denial of motion for return of seized weapons. — Where a motion was solely for the return of weapons taken in a search pursuant to warrant, and a nolle prosequi was entered on the charges arising from that seizure of weapons, denial of the motion for the return of the seized weapons would be treated as an appealable final order. *Epstein v. United States*, App. D.C., 359 A.2d 274 (1976).

Denial of appointment of counsel. — A defendant must obtain a final ruling on the merits of a § 23-110 motion attacking the sentence before he may appeal an order denying appointment of counsel to assist in that effort. *Jenkins v. United States*, App. D.C., 548 A.2d 102 (1988).

Dismissal of an information without prejudice is an appealable order. *United States v. Cummings*, App. D.C., 301 A.2d 229 (1973).

That a dismissal without prejudice of an indictment creates no bar to seeking a new indictment does not render the dismissal order nonreviewable. *United States v. Hector*, App. D.C., 298 A.2d 504 (1972).

Hearing commissioner's ruling not "final order" until approved by judge. — Court of Appeals lacked jurisdiction over appeal from a hearing commissioner's order dismissing criminal information where commis-

sioner's ruling was not a final order because it was not approved by a judge. *District of Columbia v. Eck*, App. D.C., 476 A.2d 687 (1984).

Review of administrative agency orders. — This section is broad enough to include review of administrative agency orders. *Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 287 A.2d 87 (1972).

Requirement of exhaustion of remedies. — Board of Education employees claiming Board of Education had unlawfully withheld union dues from their wages after the expiration of a collective bargaining agreement were properly required to exhaust their administrative remedies before bringing suit in Superior Court. *Hawkins v. Hall*, App. D.C., 537 A.2d 571 (1988).

Appeal in small claims action. — While the losing party in a small claims action is not entitled to an appeal as a matter of right, the Court of Appeals usually grants appeals in cases when the appellant states grounds showing apparent error or a question of law that has not been but should be decided by the reviewing court. *Karath v. Generalis*, App. D.C., 277 A.2d 650 (1971).

Contempt citation without imposition of sanction not final order. — Absent the imposition of a sanction, a contempt citation alone is not a final order and raises no justiciable issue for appeal. *Beckwith v. Beckwith*, App. D.C., 379 A.2d 955 (1977), cert. denied, 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405 (1978).

Absent imposition of a sanction, whether it be fine, probation, or term in jail, citation imposed on assistant United States attorney for criminal contempt in and of itself is not final order and raises no justiciable issue for appeal. *In re Cys*, App. D.C., 362 A.2d 726 (1976).

Because it is premature. — An appeal from an adjudication of contempt but before the announcement of the sentence is premature. *West v. United States*, App. D.C., 346 A.2d 504 (1975).

Where the trial court had not entered a final order fixing the total amount of fine to be paid for a civil contempt, it was premature for the Court of Appeals to consider the extent of the contemnor's ultimate pecuniary liability for the civil contempt. *Bolden v. Bolden*, App. D.C., 376 A.2d 430 (1977).

But is final where sanction is stayed. — A divorce court order finding the father in arrears on child support payments, increasing the support payments, and holding the father in contempt, which order as far as it related to the father's imprisonment was stayed on condition that he comply with the payment schedule ordered, is neither preliminary or interlocutory in nature and is in all respects a conclusive determination on the merits of the mother's motion for contempt. *Wells v. Wells*, App. D.C., 358 A.2d 648 (1976).

To fall within exception of subsection (a)(2)(C) as appealable order "changing or affecting the possession of property," an order must change the status quo. *Jenkins v. Parker*, App. D.C., 428 A.2d 367 (1981).

Order "affecting property." — To fall within the "affecting property" exception in subsection (a)(2)(C), an order must change the status quo between landlord and tenant. *Hagner Mgt. Corp. v. Lawson*, App. D.C., 534 A.2d 343 (1987).

Order staying proceedings was not appealable. — Order staying proceedings in a landlord-tenant case was not appealable and did not fall within one of the exceptions set forth in subsection (a)(2). *Hagner Mgt. Corp. v. Lawson*, App. D.C., 534 A.2d 343 (1987).

Order staying proceeding not appealable unless it has effect of injunction. — An order staying a proceeding pending before the court that issues the order is not on its face an injunction, and it is not appealable under subsection (a)(2)(A) unless it can be deemed to have the effect of an injunction. *Hagner Mgt. Corp. v. Lawson*, App. D.C., 534 A.2d 343 (1987).

Protective orders in connection with injunctions. — Protective orders and orders with respect to protective orders are categorically appealable as orders with respect to injunctions under subparagraph (a)(2)(A) of this section. *McQueen v. Lustine Realty Co.*, App. D.C., 547 A.2d 172 (1988).

Determination of validity of antenuptial agreement not final judgment. — In an action by a wife for separate maintenance, a determination of the validity of an antenuptial agreement, interposed as an affirmative defense, was not a final judgment because the exact amount of the husband's support obligation had been left for future determination. *Burtoff v. Burtoff*, App. D.C., 390 A.2d 989 (1978).

Nor is order requiring party to appear. — An order requiring a party to appear and show cause why he should not be held in contempt for his noncompliance with a prior order is not a final order, and is therefore not appealable. *Eisenberg v. Eisenberg*, App. D.C., 357 A.2d 396 (1976).

Order authorizing negotiations for private sale of property under conservatorship was not final, and thus not appealable. In re *Parsons*, App. D.C., 328 A.2d 383 (1974), cert. denied, 423 U.S. 803, 96 S. Ct. 11, 46 L. Ed. 2d 24 (1975).

Lineup order not appealable. — Where the defendant, lawfully subject to jurisdiction of trial court by virtue of criminal charge, is ordered to be placed in lineup, that order is not appealable. *United States v. Eley*, App. D.C., 287 A.2d 830 (1972).

Pretrial evidentiary ruling that evidence concerning one alleged rape would not be admissible in separate trial involving another to show a "common scheme or plan" is not appealable. *United States v. Shields*, App. D.C., 366 A.2d 454 (1976).

Review of subpoena or discovery order available only after contempt sentence. — A witness may obtain review of a subpoena or a discovery order only after he has refused to comply with the subpoena or order and is sentenced for contempt of court. *United States v. Harrod*, App. D.C., 428 A.2d 30 (1981).

Government cannot appeal a sentencing order under this section. *United States v. Stokes*, App. D.C., 365 A.2d 615 (1976).

Prerequisites for certification for interlocutory appeal. — Before the trial court may properly certify a matter for interlocutory appeal, it must first be determined whether the litigation is properly suited to application of interlocutory appeal statute and whether the time required to make the interlocutory review will be shorter than a trial on the merits. *Plunkett v. Gill*, App. D.C., 287 A.2d 543 (1972).

Prerequisite that alternative would mean greater delay not met. — Where, by the terms of stipulation between the parties, retrial of the original claim would be waived and the case would be dismissed with prejudice if, after granting the application for interlocutory appeal, the Court of Appeals ruled in favor of the respondent, but if the Court were to rule for the applicants, the litigation would be protracted by the necessity of a trial on the counterclaim and possibly a retrial of the original claim as well, the stipulation does not meet the requirement for an interlocutory appeal that the alternative to it would mean greater delay and expense than the interlocutory review itself and the application for permission to appeal must be denied. *Hewsen v. Lynch*, App. D.C., 343 A.2d 45 (1975).

Motion to effectuate constructive service. — The Court of Appeals has jurisdiction to review trial court orders denying motions by indigent divorce complainants to effectuate constructive service upon their husbands, even though such orders did not terminate pending litigation in any of the cases, since the orders in question were separable from the merits of divorce actions themselves and, if unreviewed, could cause irreparable harm to parties. *Bearstop v. Bearstop*, App. D.C., 377 A.2d 405 (1977).

Interlocutory appeal held inappropriate. — The denial of a motion to dismiss an action seeking both possession of certain leased premises and a money judgment for back rent, on the ground that the court had no jurisdiction to render a money judgment because no personal service had been made, is not appropriate

for interlocutory appeal. *Plunkett v. Gill*, App. D.C., 287 A.2d 543 (1972).

Because an underlying action was still pending before the trial court when the appeal was filed, the appeal was taken from an interlocutory order. Interlocutory orders granting attorney's fees are not immediately appealable under this section before entry of a final judgment. *Dyer v. William S. Bergman & Assocs.*, App. D.C., 635 A.2d 1285 (1993).

Denials, but not grants, of stays of litigation pending arbitration are appealable interlocutory orders. *Brandon v. Hines*, App. D.C., 439 A.2d 496 (1981).

Order staying proceedings and referring dispute to arbitration is not appealable pursuant to subparagraph (a)(2)(A). *Hercules & Co. v. Shama Restaurant Corp.*, App. D.C., 566 A.2d 31 (1989).

Denial of motion for summary judgment on lien not appealable. — Where an escrow account has been substituted for property as security for a mechanic's lien and the defendant's motion for summary judgment on the lien is denied, the order does not affect the escrow arrangement and therefore is not an appealable order "changing or affecting the possession of property" under subsection (a)(2)(C) of this section. *Jenkins v. Parker*, App. D.C., 428 A.2d 367 (1981).

A motion for summary judgment on a complaint to enforce a mechanic's lien is equivalent to a motion to quash an attachment and thus an order denying the motion is not an appealable interlocutory order. *Jenkins v. Parker*, App. D.C., 428 A.2d 367 (1981).

Order granting partial summary judgment while counterclaims are pending is typically not final and appealable. *Word v. Ham*, App. D.C., 495 A.2d 748 (1985).

Notice of appeal filed prematurely must be dismissed. — Even if the Court of Appeals were to consider an appeal taken from an adjudication of contempt but before the announcement of the sentence to be an appeal from a final judgment, the Court would still be compelled to dismiss the appeal since the notice of appeal was prematurely filed more than a month before sentencing. *West v. United States*, App. D.C., 346 A.2d 504 (1975).

Challenge to instructions raised for first time on appeal. — Under plain error review, the Court of Appeals necessarily must consider as part of such a review the merits of a challenge to instructions raised for the first time on appeal. However, while the court will consider such a challenge, an instructional error raised initially on direct appeal will constitute reversible error only where the error complained of is so clearly prejudicial to the complainant's substantial rights as to jeopardize the very fairness and integrity of the trial. *Allen v. United States*, App. D.C., 495 A.2d 1145 (1985).

Estoppel from raising objections to instructions. — A plaintiff who objects to the giving of affirmative defense instructions, but who does not request either a special verdict or a general verdict with interrogatories, is estopped from raising any claim of error with respect to the affirmative defense on appeal. *Robinson v. Washington Internal Medicine Assocs.*, App. D.C., 647 A.2d 1140 (1994).

Grant of partial summary judgment held appealable. — The grant of a partial summary judgment was immediately appealable under subsection (a)(2)(C) of this section, where the order, in light of the grant of possession to vendors, was one changing or affecting the possession of property. *Word v. Ham*, App. D.C., 495 A.2d 748 (1985).

Order granting summary judgment to one of multiple defendants not appealable without SCR-Civil 54(b) certification. — Absent a SCR-Civil 54(b) certification, the Court of Appeals cannot exercise jurisdiction over an appeal of an order granting summary judgment to one of multiple defendants no matter how many good reasons may be advanced as to the importance and usefulness of an appellate decision on the merits. *Riddick v. William M. Sinclair Co.*, App. D.C., 481 A.2d 1306 (1984).

Denial of motion to dismiss is not final order. *Crown Oil & Wax Co. v. Safeco Ins. Co. of Am.*, App. D.C., 429 A.2d 1376 (1981).

Effect of filing a motion to alter or amend the findings and the judgment is to "terminate" the time within which an appeal could be taken from the judgment. More significantly, the pending motion also renders premature the filing of the notices of appeal from the judgment. Thus, with such a motion still undisposed of on the merits, the Court of Appeals lacks substantive jurisdiction to proceed on the case. *Carter v. Cathedral Ave. Coop.*, App. D.C., 532 A.2d 681 (1987).

Protective order not final order within section. — A protective order, requiring tenants to deposit their full monthly rent into the registry of the court, pendente lite, and allowing landlord, suing for possession, to withdraw each month from the registry a portion of such deposits, is not a final order within the provisions of this section. *Dameron v. Capitol House Assocs.*, App. D.C., 431 A.2d 580 (1981).

Government not prevented from appealing ruling on post-verdict acquittal motion. — The double jeopardy clause of the U.S. Constitution neither prevents the government from appealing, pursuant to subsection (a)(1) of this section, the Superior Court's ruling on defendant's post-verdict motion for judgment of acquittal, based on Superior Court Criminal Rule 29(c), nor precludes the Court of Appeals from reviewing that ruling. *United States v. Hubbard*, App. D.C., 429 A.2d 1334, cert. de-

nied, 454 U.S. 857, 102 S. Ct. 308, 70 L. Ed. 2d 153 (1981).

Collateral attack of probation modification order. — Where the defendant had accepted the probation condition without challenging it on direct appeal, he was foreclosed from attacking the condition on his subsequent appeal from the order revoking probation. *Barnes v. United States*, App. D.C., 513 A.2d 249 (1986).

Appeal from imposition of consecutive sentences not premature. — An appeal from the imposition of consecutive sentence under the Federal Youth Corrections Act is not premature when it is made immediately after the imposition of the second sentence and while the infant is still serving his first sentence. *Royster v. United States*, App. D.C., 361 A.2d 165 (1976).

Appeal following imposition of penalty pursuant to § 33-541(e)(1). — A criminal defendant may prosecute an appeal after a jury finding of guilty and an imposition of 180 days probation pursuant to § 33-541(e)(1). *Mozingo v. United States*, App. D.C., 503 A.2d 1238 (1986).

Appeal dismissed where appellant not aggrieved party. — A hospital superintendent could not appeal a trial court's order releasing one whom he had sought unsuccessfully to have judicially hospitalized under § 21-501 et seq. because the superintendent was not an aggrieved party within the meaning of subsection (b) of this section and any such right of appeal would also be contrary to the design and intent of § 21-501 et seq. In re *Lomax*, App. D.C., 386 A.2d 1185 (1978).

An executor directed by court order to collect a decedent's share of the proceeds of the sale of a real estate venture and to include those proceeds in the assets of the estate rather than distributing them to one of the decedent's creditors was not aggrieved by an order which denied priority status to a creditor but was in no way a decision adverse to the estate or to the executor as its representative; hence his appeal was dismissed. In re *Estate of Jacobson*, App. D.C., 387 A.2d 590 (1978).

Subsection (e) does not cure jurisdictional defects. — Subsection (e) of this section is merely a qualification of the harmless error rule under which insubstantial, unprejudicial errors and defects are ignored in the determination of the merits of the appeal, and such subsection does not cure jurisdictional defects. *Brown v. United States*, App. D.C., 379 A.2d 708 (1977).

Degree of error must be evaluated on case by case basis whether objection is made or not. *Lucas v. United States*, App. D.C., 436 A.2d 1282 (1981), aff'd, App. D.C., 522 A.2d 876 (1987).

Subsection (e) of this section codifies harmless error rule. *Towles v. United States*, App. D.C., 428 A.2d 836 (1981), cert. denied, 483 U.S. 1008, 107 S. Ct. 3236, 97 L. Ed. 2d 741 (1987).

Standard of review in subsection (e) of this section requires the Court of Appeals to determine whether, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, the judgment was not substantially swayed by the error. *Giles v. United States*, App. D.C., 432 A.2d 739 (1981).

Where, from the whole of the record before it, the Court of Appeals cannot conclude that substantial rights were not affected, the error committed at trial was not harmless. *Towles v. United States*, App. D.C., 428 A.2d 836 (1981), cert. denied, 483 U.S. 1008, 107 S. Ct. 3236, 97 L. Ed. 2d 741 (1987).

Court of Appeals will not fail to consider claim of plain error where it appears that a defendant was denied a fair trial, as it has the discretionary power to notice defects raised for the first time on appeal if substantial rights were clearly and prejudicially denied below. *Towles v. United States*, App. D.C., 428 A.2d 836 (1981), cert. denied, 483 U.S. 1008, 107 S. Ct. 3236, 97 L. Ed. 2d 741 (1987).

When defendant dies before he has exhausted his right of appeal, the preferable approach is to dismiss the appeal and remand the case to the lower court with directions to vacate the conviction and abate the prosecution by reason of death. *Howell v. United States*, App. D.C., 455 A.2d 1371 (1983).

Dismissal of civil complaint without prejudice appealable. — The dismissal of a civil complaint, even without prejudice, is a final order and therefore appealable. *Perry v. District of Columbia*, App. D.C., 474 A.2d 824, appeal dismissed and cert. denied, 469 U.S. 805, 105 S. Ct. 61, 83 L. Ed. 2d 12 (1984).

Where dismissal of a complaint was an appealable final order under subsection (a)(1) of this section, but where appellants failed to file a timely appeal under D.C.App.R. 4(a), the only issue properly before the appeals court was whether the trial court abused its discretion in denying appellants' motion pursuant to Rule 60(b). *Reid v. District of Columbia*, App. D.C., 634 A.2d 423 (1993).

Substitute statement of trial proceedings held insufficient to permit meaningful review. — Although a substitute statement prepared under former District of Columbia Court of Appeals Rule 10(j) (now see Rule 10(d)) was the best available supplementation of the trial record where the entire trial transcript was unavailable, the supplemental record, which was at best a fragmentary account of trial prepared without appellant's assistance, was not adequate to permit meaningful review

where it lacked the completeness necessary to protect appellant's right to pursue an appeal. *Cole v. United States*, App. D.C., 478 A.2d 277 (1984).

Trial court order vacating decision of Metropolitan Police Department Trial Board and awarding damages and costs, is sufficiently "final" for purposes of judicial review. *District of Columbia v. Konek*, App. D.C., 477 A.2d 730 (1984).

Error held not to affect substantial rights of parties. — See *Johnson v. United States*, App. D.C., 298 A.2d 516 (1972); *Hawkins v. United States*, App. D.C., 304 A.2d 279 (1973); *Hairston v. United States*, App. D.C., 500 A.2d 994 (1985).

Insufficient record on appeal. — Where the record on appeal from an order detaining a juvenile pending trial on charges of carnal knowledge and assault is insufficient to indicate the factors relied upon by the trial court in ordering the detention, the case will be remanded to the Superior Court with directions that the judge file statements of reasons for the order or reconsider the same. *In re M.L. DeJ.*, App. D.C., 310 A.2d 834 (1973).

Use of standard cautionary instruction regarding credibility of accomplice testimony does not affect the substantial rights of the parties, even where the accomplice has entered a plea agreement and is, in effect, immunized. *Price v. United States*, App. D.C., 531 A.2d 984 (1987).

Issues resolved in federal action not considered. — In the interest of comity, the Court of Appeals will refrain from considering issues of fact and law identical to those resolved against the party in an action in federal court. *Marshall v. District Unemployment Comp. Bd.*, App. D.C., 377 A.2d 429 (1977).

Effect of failure to appeal. — Defendant was not entitled to disobey contempt order because she never sought a stay or an expedited appeal of the order. *In re Scott*, App. D.C., 517 A.2d 310 (1986).

Discovery orders. — Discovery orders generally do not qualify as final orders and so are not separately appealable. *Scott v. Jackson*, App. D.C., 596 A.2d 523 (1991).

Discovery order requiring discovery of information under the "extraordinary necessity" exception in § 32-505, was not appealable under the exception to final order rule. *Scott v. Jackson*, App. D.C., 596 A.2d 523 (1991).

Order for psychiatric examination not appealable. — The order on appeal, requiring defendant to have a psychiatric examination, was the functional equivalent of a discovery order and nonappealable. *Horton v. United States*, App. D.C., 591 A.2d 1280 (1991).

Order quashing service of process and dismissing complaint. — The order quashing the service of process and dismissing the com-

plaint was an appealable final order. *State Farm Mut. Auto. Ins. Co. v. Brown*, App. D.C., 593 A.2d 184 (1991).

Interlocutory appeal of protective orders. — Protective orders in the Landlord and Tenant Branch of the District of Columbia Court of Appeals are appealable interlocutorily under this section. *LaPrade v. Liebler*, App. D.C., 614 A.2d 546 (1992).

Interlocutory order denying motion to dismiss was appealable. — Interlocutory order denying defendant church's motion to dismiss minister's wrongful discharge suit based on constitutional immunity met the narrow exception to the rule of finality and was within jurisdiction of Court of Appeals to review where trial court's denial of church's motion conclusively determined the disputed issue of church's claim of immunity from suit, nature of immunity claim made it collateral to and separate from merits of minister's wrongful discharge claim, and church's claim of immunity under the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution would be irreparably lost if not adjudicated before trial. *United Methodist Church v. White*, App. D.C., 571 A.2d 790 (1990).

Grant of summary judgment an interlocutory order properly before Court of Appeals. — The grant of summary judgment against the District in a suit to quiet title is an interlocutory order "changing or affecting the possession of property," which would be properly before the Court of Appeals, despite an outstanding allegation of wrongful eviction by the District as a result of an allegedly invalid tax sale still before the trial court. *District of Columbia v. Mayhew*, App. D.C., 601 A.2d 37 (1991).

Child support guidelines. — Superior Court Child Support Guideline Committee has authority to establish support guidelines in the absence of legislation, but Court of Appeals is the final arbiter of substantive child support law. *Fitzgerald v. Fitzgerald*, App. D.C., 566 A.2d 719 (1989).

Amicus curiae counsel. — Only a party aggrieved by an order or judgment may appeal as of right; amicus curiae counsel is not such a party. *Briggs v. United States*, App. D.C., 597 A.2d 370 (1991).

Orders disqualifying counsel in civil cases are not appealable in the District of Columbia courts as collateral orders. *Brown v. First Am. Title Ins. Co.*, App. D.C., 623 A.2d 1154 (1993).

Denial of summary judgment motion based on claim of immunity is appealable interlocutory order. — The appellate court has jurisdiction of an interlocutory appeal denying a motion for summary judgment which was based in part on an assertion of qualified

immunity against a claim under 42 U.S.C. § 1983 (1981) and official immunity against common law claims. *Durso v. Taylor*, App. D.C., 624 A.2d 449 (1993).

Dismissal of appeal by fugitive discretionary. — Dismissal of the appeal of a fugitive appellant is discretionary with the court, even if the appeal is brought pursuant to a statutory right, where appellant absented himself from trial and delayed for several months sentencing and the time for filing a notice of appeal. *West v. United States*, App. D.C., 604 A.2d 422 (1992).

Cited in *Shellie v. United States*, App. D.C., 277 A.2d 288 (1971); *United States v. Eley*, App. D.C., 286 A.2d 239 (1972); *Dixon v. United States*, App. D.C., 287 A.2d 89, cert. denied, 407 U.S. 926, 92 S. Ct. 2474, 32 L. Ed. 2d 813 (1972); *Smith v. Murphy*, App. D.C., 294 A.2d 357 (1972); *Pryor v. Pryor*, App. D.C., 343 A.2d 321 (1975); *United States v. Miqueli*, App. D.C., 349 A.2d 472 (1975); *Thompson v. United States*, 548 F.2d 1031 (D.C. Cir. 1976); *Carter v. Saxon*, App. D.C., 358 A.2d 639 (1976); *In re C.A.P.*, App. D.C., 359 A.2d 11 (1976); *Uteley v. Uteley*, App. D.C., 364 A.2d 1167 (1976); *In re T.T.T.*, App. D.C., 365 A.2d 366 (1976); *Bethea v. United States*, App. D.C., 365 A.2d 64 (1976), cert. denied, 433 U.S. 911, 97 S. Ct. 2979, 53 L. Ed. 2d 1095 (1977); *In re C.I.T. & C.M.T.*, App. D.C., 369 A.2d 171 (1977); *Neuman v. Neuman*, App. D.C., 377 A.2d 393 (1977); *Toomey v. Cammack*, App. D.C., 379 A.2d 700 (1977); *In re D.L.J.*, App. D.C., 383 A.2d 1081 (1978); *Sellman v. United States*, App. D.C., 386 A.2d 303 (1978); *Hsu v. United States*, App. D.C., 392 A.2d 972 (1978); *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979); *In re Kane*, App. D.C., 422 A.2d 995 (1980); *White v. United States*, App. D.C., 425 A.2d 616 (1980); *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981); *Pender v. District of Columbia*, App. D.C., 430 A.2d 513 (1981); *Bogans v. Jeffers*, App. D.C., 430 A.2d 518 (1981); *Boddie v. Robinson*, App. D.C., 430 A.2d 519 (1981); *Hicks v. United States*, App. D.C., 431 A.2d 18 (1981); *White v. Washington Metro. Area Transit Auth.*, App. D.C., 432 A.2d 726 (1981); *Austin v. United States*, App. D.C., 433 A.2d 1081 (1981); *Bernay v. Sales*, App. D.C., 435 A.2d 398 (1981); *Bynes v. Scheve*, App. D.C., 435 A.2d 1058 (1981); *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981); *American Fed'n of Gov't Employees v. Koczak*, App. D.C., 439 A.2d 478 (1981); *Henderson v. Snider Bros.*, App. D.C., 439 A.2d 481 (1981); *Wyman v. Roesner*, App. D.C., 439 A.2d 516 (1981); *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981); *McBride v. United States*, App. D.C., 441 A.2d 644 (1982); *United States v. Jackson*, App. D.C., 441 A.2d 937 (1982); *Musgrove v. United States*, App. D.C., 441 A.2d 980 (1982);

Turner v. United States, App. D.C., 443 A.2d 542 (1982); *United States v. Mendelsohn*, App. D.C., 443 A.2d 1311 (1982); *Leiken v. Wilson*, App. D.C., 445 A.2d 993 (1982); *Blackledge v. United States*, App. D.C., 447 A.2d 46 (1982); *Sweet v. United States*, App. D.C., 449 A.2d 315 (1982); *Hines v. John B. Sharkey Co.*, App. D.C., 449 A.2d 1092 (1982); *Yarmolinsky v. Perpetual Am. Fed. Sav. & Loan Ass'n*, App. D.C., 451 A.2d 92 (1982); *Mulky v. United States*, App. D.C., 451 A.2d 855 (1982); *Robinson v. Kerwin*, App. D.C., 454 A.2d 1302 (1982); *Godfrey v. United States*, App. D.C., 454 A.2d 293 (1983); *Robinson v. Howard Univ.*, App. D.C., 455 A.2d 1363 (1983); *Page Assocs. v. District of Columbia*, App. D.C., 463 A.2d 649 (1983); *Group Health Ass'n v. Gatlin*, App. D.C., 463 A.2d 700 (1983); *Cohen v. Owens & Co.*, App. D.C., 464 A.2d 904 (1983); *Gordon v. United States*, App. D.C., 466 A.2d 1226 (1983); *Goldkind v. Snider Bros.*, App. D.C., 467 A.2d 468 (1983); *Asch v. Taveres*, App. D.C., 467 A.2d 976 (1983); *Minor v. United States*, App. D.C., 475 A.2d 414 (1984); *United States v. Ellerbee*, App. D.C., 481 A.2d 473 (1984); *Clark v. Clark*, App. D.C., 485 A.2d 621 (1984); *Howard Univ. v. Poggi-Asamani*, App. D.C., 488 A.2d 1350 (1985); *Kaiser-Georgetown Community Health Plan, Inc. v. Stutsman*, App. D.C., 491 A.2d 502 (1985); *Tung v. W.T. Cabe & Co.*, App. D.C., 492 A.2d 267 (1985); *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987); *Warrick v. United States*, App. D.C., 528 A.2d 438 (1987); *Stein v. United States*, App. D.C., 532 A.2d 641 (1987), cert. denied, 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705 (1988); *District of Columbia v. Owens-Corning Fiberglass Corp.*, 115 WLR 1905 (Super. Ct. 1987); *Jackson v. District of Columbia Employees' Comp. Appeals Bd.*, App. D.C., 537 A.2d 576 (1988); *1827 M St., Inc. v. District of Columbia*, App. D.C., 537 A.2d 1078 (1988); *Stutsman v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, App. D.C., 546 A.2d 367 (1988); *Cowen v. Children's Hosp. Nat'l Medical Ctr.*, 116 WLR 985 (Super. Ct. 1988); *Council of Sch. Officers v. Vaughn*, App. D.C., 553 A.2d 1222 (1989); *District of Columbia Dep't of Cors. v. Teamsters Union Local 246*, App. D.C., 554 A.2d 319 (1989); *Robinson v. Evans*, App. D.C., 554 A.2d 332 (1989); *Westbridge Condominium Ass'n v. Lawrence*, App. D.C., 554 A.2d 1163 (1989); *Robinson v. Booker*, App. D.C., 561 A.2d 483 (1989); *Frank Emmet Real Estate, Inc. v. Monroe*, App. D.C., 562 A.2d 134 (1989); *Arlt v. United States*, App. D.C., 562 A.2d 633 (1989); *Oxendine v. Merrell Dow Pharmaceuticals, Inc.*, App. D.C., 563 A.2d 330 (1989), cert. denied, 493 U.S. 1074, 110 S. Ct. 1121, 107 L. Ed. 2d 1028 (1990); *Council v. Hogan*, App. D.C., 566 A.2d 1070 (1989); *District of Columbia v. Owens-Corning Fiberglass Corp.*, App. D.C., 572 A.2d 394 (1989), cert. denied, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed.

2d 173 (1990); *Benikas v. Custom Print, Inc.*, 117 WLR 2389 (Super. Ct. 1989); *Marlyn Condominium, Inc. v. McDowell*, App. D.C., 576 A.2d 1346 (1990); *Holmes v. United States*, App. D.C., 580 A.2d 1259 (1990); *Mount Jezreel Christians Without a Home v. Board of Trustees*, App. D.C., 582 A.2d 237 (1990); *Jackson v. Scott*, 118 WLR 1969 (Super. Ct. 1990); *Wheeler v. Goulart*, App. D.C., 593 A.2d 173 (1991); *McDiarmid v. McDiarmid*, App. D.C., 594 A.2d 79 (1991); *Jackson v. United States*, App. D.C., 600 A.2d 90 (1991); *Bratcher v. United States*, App. D.C., 604 A.2d 858 (1992); *Dominion Caisson Corp. v. Clark*, App. D.C., 614 A.2d 529 (1992); *Crane v. Crane*, App. D.C., 614 A.2d 935

(1992); *In re Reynard*, App. D.C., 616 A.2d 1262 (1992); *Lynn v. Lynn*, App. D.C., 617 A.2d 963 (1992); *First Sav. Bank v. Barclays Bank*, App. D.C., 618 A.2d 134 (1992); *Canada v. Management Partnership, Inc.*, App. D.C., 618 A.2d 715 (1993); *United States v. Harris*, App. D.C., 629 A.2d 481 (1993); *Employers Mut. Cas. Co. v. Keene Corp.*, App. D.C., 629 A.2d 581 (1993); *Lee v. Jones*, App. D.C., 632 A.2d 113 (1993); *In re Katz*, App. D.C., 638 A.2d 684 (1994); *Bagley v. Foundation for Preservation of Historic Georgetown*, App. D.C., 647 A.2d 1110 (1994); *Moattar v. Foxhall Surgical Ass'n*, 122 WLR 1981 (Super. Ct. 1994); *Sims v. Westminster Investing Corp.*, App. D.C., 648 A.2d 940 (1994).

§ 11-722. Administrative orders and decisions.

The District of Columbia Court of Appeals has jurisdiction (1) except as provided in clause (2), to review orders and decisions of the Commissioner [Mayor] of the District of Columbia, the District of Columbia Council, any agency of the District of Columbia (including the Board of Zoning Adjustment of the District of Columbia and the Zoning Commission of the District of Columbia), and the District of Columbia Redevelopment Land Agency, in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 — 1-1510); and (2) to review orders and decisions of the Public Service Commission of the District of Columbia in accordance with section 8 of the Act of March 4, 1913 (D.C. Code, chapters 1 through 10, title 43). (July 29, 1970, 84 Stat. 481, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-722.)

Cross references. — As to provisions of District Charter relating to jurisdiction of Court of Appeals, see § 431 of Appendix to this title.

Section references. — This section is referred to in §§ 17-303 and 17-307.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

Council may not expand Court's jurisdiction. — Under the District of Columbia Self-Government and Governmental Reorganization Act, the Council of the District of Colum-

bia is precluded from taking action to expand the jurisdiction of the Court of Appeals. *Capitol Hill Restoration Soc'y, Inc. v. Moore*, App. D.C., 410 A.2d 184 (1979).

Authority to order contested case hearing. — The Court of Appeals has authority to order a contested case hearing, or at least to preserve the right to such a hearing, when an agency erroneously withholds the right to a contested case hearing. *Timus v. District of Columbia Dep't of Human Rights*, App. D.C., 633 A.2d 751 (1993).

Jurisdiction for direct review only in contested case. — Pursuant to this section, the D.C. Court of Appeals has jurisdiction to review decisions and orders of District of Columbia agencies in accordance with the D.C. Administrative Procedure Act, which limits the court's direct review of such decisions and orders to those arising out of contested cases. *United States v. Board of Zoning Adjustment*, App. D.C., 644 A.2d 995 (1994).

Pursuant to this section, the Court of Appeals has jurisdiction to review, directly, agency action taken only in a contested case. *Capitol Hill Restoration Soc'y, Inc. v. Moore*, App. D.C., 410 A.2d 184 (1979).

Court of Appeals only has jurisdiction to review an order or decision of the mayor or an agency in a contested case. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, App. D.C., 549 A.2d 315 (1988).

Absent "contested case" status under the Administrative Procedure Act, the Court of Appeals does not have jurisdiction to directly review Zoning Commission's order amending zoning regulations. *Dupont Circle Citizen's Ass'n v. District of Columbia Zoning Comm'n.*, App. D.C., 343 A.2d 296 (1975).

Section 4 of the Historic Sites Subdivision Ordinance does not empower the Court of Appeals to directly review noncontested cases. *Capitol Hill Restoration Soc'y, Inc. v. Moore*, App. D.C., 410 A.2d 184 (1979).

The Court of Appeals has jurisdiction to review directly agency action taken only in a contested case; in order for a matter to be a contested case, it must involve a trial-type hearing which is required either by statute or by constitutional right. *Dupont Circle Citizens Ass'n v. Barry*, App. D.C., 455 A.2d 417 (1983); *Rones v. District of Columbia Dep't of Hous. & Community Dev.*, App. D.C., 500 A.2d 998 (1985).

The D.C. Court of Appeals has jurisdiction to review orders or decisions of District of Columbia government agencies only in "contested cases." The proceedings to which this definition refers are "trial-type" hearings, which are "statutorily or constitutionally compelled." *Singleton v. District of Columbia Dep't of Cors.*, App. D.C., 596 A.2d 56 (1991).

Petitioners request for an immediate official opinion from the Board of Elections and Ethics was not a contested case as defined in § 1-1502; therefore, the Court of Appeals lacked jurisdiction to hear a direct appeal from the board's denial of petitioner's challenge of a prospective candidate's qualifications. *Lawrence v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 611 A.2d 529 (1992).

The Appellate Court lacked jurisdiction to hear allegations of violations of the Alcohol Beverage Control Act where the Alcohol Beverage Control Board's action at issue did not arise out of a contested case proceeding. *Jones v. District of Columbia ABC Bd.*, App. D.C., 621 A.2d 385 (1993).

But Court may have alternate jurisdiction. — When Congress has authorized direct review apart from that provided by this section, the Court of Appeals has an additional form of jurisdiction over agency action, based on the particular congressional organic act, which does not require the existence of contested case status. *Capitol Hill Restoration Soc'y, Inc. v. Moore*, App. D.C., 410 A.2d 184 (1979).

Administrative determinations regarding agency's internal procedures are entitled to due respect and should not be reversed

unless "clearly wrong." *Goto v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 423 A.2d 917 (1980).

Prison discipline cases. — There is no constitutional right to a full trial-type hearing in prison discipline cases. Prisoners are entitled to some due process protections, such as the right to receive notice of the charges against them and a written statement of reasons for any disciplinary action, but other constitutional rights must generally be balanced against the correctional goals of the prison authorities. *Singleton v. District of Columbia Dep't of Cors.*, App. D.C., 596 A.2d 56 (1991).

Zoning Commission's legislative act not subject to direct review. — Where Zoning Commission acts legislatively, it is not subject to the "contested case" provisions of the Administrative Procedure Act, with the result that such action is not subject to direct review by the Court of Appeals. *W.C. & A.N. Miller Dev. Co. v. District of Columbia Zoning Comm'n.*, App. D.C., 340 A.2d 420 (1975).

Neither is discriminatory employment practices proceeding. — A discriminatory employment practices proceeding brought by a District of Columbia employee is not a "contested case" within the meaning of the Administrative Procedure Act and, hence, is not subject to direct review by the Court of Appeals. *O'Neill v. District of Columbia Office of Human Rights*, App. D.C., 355 A.2d 805 (1976).

No jurisdiction to review action of intergovernmental agency. — The Joint Committee on Landmarks of the National Capital, as an intergovernmental agency, is not an agency of the District of Columbia, and the Court of Appeals lacks jurisdiction to entertain a petition for review of its action under the Administrative Procedure Act. *Latimer v. Joint Comm. on Landmarks of Nat'l Capital*, App. D.C., 345 A.2d 484 (1975).

Section does not grant Public Service Commission exemption from Administrative Procedure Act. — This section carves out only a limited area in which the Administrative Procedure Act is inapplicable to the Public Service Commission, that being in the area of standard and scope of review, rather than wholesale exemption from coverage under the Administrative Procedure Act. *C & P Tel. Co. v. Public Serv. Comm'n.*, App. D.C., 339 A.2d 710 (1975).

Jurisdiction to review Zoning Commission's grant of preliminary approval. — The Court of Appeals has jurisdiction to review order of the Zoning Commission granting preliminary approval to a planned unit development, despite a claim that the order was not the final step in the administrative process and there had been no exhaustion of administrative remedies. *Capitol Hill Restoration Soc'y v. Zoning Comm'n.*, App. D.C., 287 A.2d 101 (1972).

Zoning decision final despite motion for reconsideration. — Election to file a motion for reconsideration with the Board of Zoning Appeals prior to petitioning the Court of Appeals for review did not affect the finality of the Board's decision. *Kenmore Joint Venture v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 391 A.2d 269 (1978).

And review proper where Board ultimately denied reconsideration. — Considerations of finality did not require the reviewing court to withhold its jurisdiction to review an administrative order of the Board of Zoning Appeals where a motion for reconsideration filed with the Board was ultimately denied. *Kenmore Joint Venture v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 391 A.2d 269 (1978).

Grounds for review of agency's interlocutory order. — Only if the Court of Appeals "is clearly convinced" that normal appellate review of a final agency decision will be ineffective to vindicate the rights of a party may it review an agency's interlocutory order. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 414 A.2d 516 (1980).

Standard of review. — A court will uphold the agency's interpretation of an act unless the interpretation is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Smith v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 548 A.2d 95 (1988).

Cited in *Columbia Realty Venture v. District of Columbia Hous. Rent Comm'n*, App. D.C., 350 A.2d 120 (1975); *Hanke v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 353 A.2d 301 (1976); *Barber v. District of Columbia Dep't of Human Resources*, App. D.C., 361 A.2d 194 (1976); *Kopff v. District of Colum-*

bia ABC Bd., App. D.C., 381 A.2d 1372 (1977); *Wieck v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 383 A.2d 7 (1978); *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 384 A.2d 29 (1978); *Washington Pub. Interest Org. v. Public Serv. Comm'n*, App. D.C., 393 A.2d 71 (1978), cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979); *Rorie v. District of Columbia Dep't of Human Resources*, App. D.C., 403 A.2d 1148 (1979); *Echard v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 422 A.2d 1275 (1980); *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981); *Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n*, App. D.C., 432 A.2d 343 (1981); *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981); *District of Columbia v. Douglass*, App. D.C., 452 A.2d 329 (1982); *National Black Child Dev. Inst., Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 483 A.2d 687 (1984); *Gilles v. Touchstone*, 676 F. Supp. 341 (D.D.C. 1987); *Donnelly Assocs. v. District of Columbia Historic Preservation Review Bd.*, App. D.C., 520 A.2d 270 (1987); *White v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 537 A.2d 1133 (1988); *Communication Workers, Local 2336 v. District of Columbia Taxicab Comm'n*, App. D.C., 542 A.2d 1221 (1988); *Randall v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 551 A.2d 90 (1988); *Jones v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 553 A.2d 645 (1989); *Donahue v. District of Columbia Bd. of Psychology*, App. D.C., 562 A.2d 116 (1989); *Superior Beverages, Inc. v. District of Columbia ABC Bd.*, App. D.C., 567 A.2d 1319 (1989); *Hessey v. Burden*, App. D.C., 584 A.2d 1 (1990).

§ 11-723. Certification of questions of law.

(a) The District of Columbia Court of Appeals may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, or the highest appellate court of any State, if there are involved in any proceeding before any such certifying court questions of law of the District of Columbia which may be determinative of the cause pending in such certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the District of Columbia Court of Appeals.

(b) This section may be invoked by an order of any of the courts referred to in subsection (a) upon the court's motion or upon motion of any party to the cause.

(c) A certification order shall set forth (1) the question of law to be answered; and (2) a statement of all facts relevant to the questions certified and the nature of the controversy in which the questions arose.

(d) A certification order shall be prepared by the certifying court and forwarded to the District of Columbia Court of Appeals. The District of

Columbia Court of Appeals may require the original or copies of all or such portion of the record before the certifying court as are considered necessary to a determination of the questions certified to it.

(e) Fees and costs shall be the same as in appeals docketed before the District of Columbia Court of Appeals and shall be equally divided between the parties unless precluded by statute or by order of the certifying court.

(f) The District of Columbia Court of Appeals may prescribe the rules of procedure concerning the answering and certification of questions of law, under this section.

(g) The written opinion of the District of Columbia Court of Appeals stating the law governing any questions certified under subsection (a) shall be sent by the clerk to the certifying court and to the parties.

(h)(1) The District of Columbia Court of Appeals, on its own motion or the motion of any party, may order certification of questions of law to the highest court of any State under the conditions described in subsection (a).

(2) The procedures for certification from the District of Columbia to a State shall be those provided in the laws of that State. (Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 7.)

Scope of section. — While this section draws no distinction as to which types of appeals are appropriate vehicles for certified questions of law, District of Columbia Court of Appeals declined to hear a question certified from the United States Court of Appeals which originated as an interlocutory appeal of a case pending before a United States District Court, because the legislative history of the section suggests that Congress intended to limit certification to the United States Supreme Court, United States Court of Appeals, and the highest courts of the states, excluding United States District Courts, in order to achieve certification without unduly burdening the District of Columbia Court of Appeals. *Georgetown Univ. v. Sportec Int'l, Inc.*, App. D.C., 572 A.2d 119 (1990).

Discretion of court. — The decision of a federal court to certify questions of law pursuant to state-established procedures of this type rests with the sound discretion of the court and the most important consideration guiding the exercise of the court's discretion to certify a question to the state court is whether the reviewing court finds itself genuinely uncertain about a question of state law that is vital to a correct disposition of the case before it. *Tidler v. Eli Lilly & Co.*, 851 F.2d 418 (D.C. Cir. 1988).

Appropriateness of certification. — Where the applicable state law is clear, certification is inappropriate; it is not a procedure by which federal courts may abdicate their responsibility to decide a legal issue when the relevant sources of state law available to it provide a discernible path for the court to follow. *Tidler v. Eli Lilly & Co.*, 851 F.2d 418 (D.C. Cir. 1988).

Certification of question was denied where 1) plaintiffs were requesting that courts adopt new theories of liability, which had not been specifically rejected by state courts but which would amend state law, 2) plaintiffs did not request certification at the trial court level, and 3) the record did not display the necessary factual clarity to pose a well-framed concrete question of law. *Tidler v. Eli Lilly & Co.*, 851 F.2d 418 (D.C. Cir. 1988).

When considering a certified question, Court of Appeals is not limited to the designated question of law but may exercise its prerogative to frame the basic issues as it sees fit for an informed decision. *Delahanty v. Hinckley*, App. D.C., 564 A.2d 758 (1989).

Cited in *Penn Mut. Life Ins. Co. v. Abramson*, 837 F.2d 484 (D.C. Cir. 1987); *Edwards v. Mutual of Omaha Ins. Co.*, 842 F.2d 1316 (D.C. Cir. 1988); *Delahanty v. Hinckley*, 845 F.2d 1069 (D.C. Cir. 1988); *Railco Multi-Construction Co. v. Gardner*, 902 F.2d 71 (D.C. Cir. 1990); *Nello L. Teer Co. v. Washington Metro. Area Transit Auth.*, 921 F.2d 300 (D.C. Cir. 1990); *Lex Tex Ltd. v. Skillman*, App. D.C., 579 A.2d 244 (1990); *Masri v. Adamar of N.J., Inc.*, App. D.C., 595 A.2d 398 (1991); *Elam v. Monarch Life Ins. Co.*, App. D.C., 598 A.2d 1167 (1991); 3307 M St. Partners v. Commonwealth Land Title Ins. Co., 782 F. Supp. 4 (D.D.C. 1992); *Oliver T. Carr Co. v. United Technologies Communications Co.*, App. D.C., 604 A.2d 881 (1992); *Luck v. District of Columbia*, App. D.C., 617 A.2d 509 (1992); *Washington Metro. Area Transit Auth. v. Nello L. Teer Co.*, App. D.C., 618 A.2d 128 (1992); *Joy v. Bell Helicopter Textron, Inc.*, 999 F.2d 549 (D.C. Cir. 1993);

National Union Fire Ins. Co. v. Riggs Nat'l Bank, 5 F.3d 554 (D.C. Cir. 1993); Jing W. Huang v. D'Albora, App. D.C., 644 A.2d 1 (1994); Johnson v. Washington Metro. Area Transit Auth., 867 F. Supp. 1103 (D.C. Cir. 1994).

Subchapter III. Miscellaneous Provisions.

§ 11-741. Contempt powers.

(a) Subject to the limitation described in subsection (b), and in addition to the powers conferred by section 402 of title 18, United States Code, the District of Columbia Court of Appeals, or a judge thereof, may punish for disobedience of an order or for contempt committed in the presence of the court.

(b)(1) In the hearing of an appeal from an order of the Superior Court of the District of Columbia regarding the custody of a minor child conducted in the Family Division of the Superior Court under paragraph (1) or (4) of section 11-1101, no individual may be imprisoned for civil contempt for more than 12 months (except as provided in paragraph (2)), pursuant to the contempt power described in subsection (a), for disobedience of an order or for contempt committed in the presence of the court. This limitation does not apply to imprisonment for criminal contempt or for any other criminal violation.

(2) Notwithstanding the provisions of paragraph (1), an individual who is charged with criminal contempt pursuant to paragraph (3) may continue to be imprisoned for civil contempt until the completion of such individual's trial for criminal contempt, except that in no case may such an individual be imprisoned for more than 18 consecutive months for civil contempt pursuant to the contempt power described in subsection (a).

(3)(A) An individual imprisoned for 6 consecutive months for civil contempt for disobedience of an order in a proceeding described in paragraph (1) who continues to disobey such order may be prosecuted for criminal contempt for disobedience of such order at any time before the expiration of the 12-month period that begins on the first day of such individual's imprisonment, except that an individual so imprisoned as of the date of the enactment of this subsection may be prosecuted under this subsection at any time during the 90-day period that begins on the date of the enactment of this subsection.

(B) The trial of an individual prosecuted for criminal contempt pursuant to this paragraph —

(i) shall begin not later than 90 days after the date on which such individual is charged with criminal contempt;

(ii) shall, upon the request of the individual, be a trial by jury; and

(iii) may not be conducted before the judge who imprisoned the individual for disobedience of an order pursuant to subsection (a). (July 29, 1970, 84 Stat. 481, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-741; Sept. 23, 1989, 103 Stat. 634, Pub. L. 101-97, § 2(b).)

Application of §§ 2 and 3 of Pub. L. 101-97. — Section 5 of Pub. L. 101-97 provided that the amendments made by §§ 2 and 3 shall apply with respect to any individual imprisoned before the expiration of the 18-month period that begins on the date of the enactment

of this Act for disobedience of an order or for contempt committed in the presence of the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

Hearing required when contempt occurs outside presence of court. — Due pro-

cess requires a hearing when the contempt is alleged to have occurred outside the presence of the court. In re Cummings, App. D.C., 471 A.2d 254 (1984).

Disbarring attorneys. — The court's power to punish violations of its orders by contempt necessarily extends to orders barring an attor-

ney from the further practice of law in the District of Columbia. Hence, the court, on its own motion, would have unquestioned jurisdiction to initiate contempt proceedings against a disbarred attorney no matter what the source of the allegation of unauthorized practice. In re Burton, App. D.C., 614 A.2d 46 (1992).

§ 11-742. Oaths, affirmations, and acknowledgments.

Each judge of the District of Columbia Court of Appeals and each employee of the court authorized by the chief judge may administer oaths and affirmations and take acknowledgments. (July 29, 1970, 84 Stat. 481, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-742.)

§ 11-743. Rules of court.

The District of Columbia Court of Appeals shall conduct its business according to the Federal Rules of Appellate Procedure unless the court prescribes or adopts modifications of those Rules. (July 29, 1970, 84 Stat. 481, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-743.)

Cross references. — As to rules of court, see § 11-946.

As to rules concerning admission to bar, see § 11-2501.

Interpretations accepted as persuasive authority. — While the Court of Appeals is not bound by the federal courts' interpretations of federal rules essentially identical or similar to the rules, those interpretations may be accepted as persuasive authority in interpreting the District of Columbia Appellate rules.

Tupling v. Britton, App. D.C., 411 A.2d 349 (1980).

But not binding authority. — The Court of Appeals, in interpreting its own procedural rules, is not bound by an interpretation given to similar federal procedural rules by the District of Columbia Circuit Court. West v. United States, App. D.C., 346 A.2d 504 (1975).

Cited in Dillard v. Yeldell, App. D.C., 334 A.2d 578 (1975); Burns v. Greater S.E. Community Hosp., 119 WLR 1869 (Super. Ct. 1991).

§ 11-744. Judicial conference.

The chief judge of the District of Columbia Court of Appeals shall summon annually the active associate judges of the District of Columbia Court of Appeals and the active judges of the Superior Court of the District of Columbia to a conference at a time and place that the chief judge designates, for the purpose of advising as to means of improving the administration of justice within the District of Columbia. The chief judge shall preside at such conference which shall be known as the Judicial Conference of the District of Columbia. Every judge summoned shall attend, and, unless excused by the chief judge of the District of Columbia Courts [Court] of Appeals, shall remain throughout the conference. The District of Columbia Court of Appeals shall provide by its rules for representation of and active participation by members of the District of Columbia Bar and other persons active in the legal profession at such conference. (1973 Ed., § 11-744; Dec. 31, 1975, 89 Stat. 1102, Pub. L. 94-193, § 1(a); June 13, 1994, Pub. L. 103-266, § 1(b)(8), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended the first and second sentences to remove gender-specific references.

Editor's notes. — In the third sentence of this section, "Court" was inserted, in brackets, to correct an error in terminology.

CHAPTER 9. SUPERIOR COURT OF THE DISTRICT OF COLUMBIA.

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*Subchapter I. Continuation and Organization.***§ 11-901. Continuation of courts; court of record; seal.**

The District of Columbia Court of General Sessions, the Juvenile Court of the District of Columbia, and the District of Columbia Tax Court are consolidated in a single court to be known as the Superior Court of the District of Columbia (hereafter in this title referred to as the "Superior Court"). The Superior Court shall be a court of record in the District of Columbia and shall have a single seal. (July 29, 1970, 84 Stat. 482, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-901.)

Cross references. — As to continuation of District of Columbia court system, see § 718 of Appendix to this title.

Section references. — This section is referred to in § 6-201.

Cited in *Simard v. Resolution Trust Corp.*, App. D.C., 639 A.2d 540 (1994); *Thomas v. United States*, App. D.C., 650 A.2d 183 (1994).

§ 11-902. Organization of the court.

The Superior Court shall consist of the following divisions: Civil Division, Criminal Division, Family Division, Probate Division, and Tax Division. The divisions of the Superior Court may be divided into such branches as the Superior Court may by rule prescribe. (July 29, 1970, 84 Stat. 482, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-902.)

Authority of divisions. — While the Superior Court, by statute, has 5 divisions, each division possesses the undivided authority of the Court. *Andrade v. Jackson*, App. D.C., 401 A.2d 990 (1979).

No jurisdictional limitation prohibiting

one division from considering matters more appropriately considered in another. — Orderly procedures require issues to be decided by the division or branch designated by the rules with the responsibility for those matters but there is no jurisdictional limitation

prohibiting one division or branch from considering matters more appropriately considered in another, and dismissal of an action is proper only where none of the divisions possesses a statutory basis for the assertion of jurisdiction.

Ali Baba Co. v. Wilco, Inc., App. D.C., 482 A.2d 418 (1984).

Cited in *Carrington v. Metropolitan Life Ins. Co.*, 111 WLR 53 (Super. Ct. 1983); *Rogers v. United States*, App. D.C., 566 A.2d 69 (1989).

§ 11-903. Composition.

The Superior Court of the District of Columbia shall consist of a chief judge and fifty-eight associate judges. (July 29, 1970, 84 Stat. 482, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-903; Mar. 19, 1984, 98 Stat. 65, Pub. L. 98-235, § 2; Nov. 21, 1989, 103 Stat. 1283, Pub. L. 101-168, § 138; Dec. 13, 1989, 103 Stat. 1967, Pub. L. 101-232, § 1.)

§ 11-904. Judges; service; compensation.

(a) The chief judge and the judges of the Superior Court shall serve as provided in chapter 15 of this title.

(b) Judges of the Superior Court shall be compensated at the rate prescribed by law for judges of United States district courts. The chief judge, while serving in that position, shall receive an additional \$500 per annum. (July 29, 1970, 84 Stat. 482, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-904; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 16(b); June 13, 1994, Pub. L. 103-266, § 1(b)(9), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (b) to remove gender-specific references.

§ 11-905. Oath of judges.

Each judge of the Superior Court, when appointed shall take the oath prescribed for judges of courts of the United States. (July 29, 1970, 84 Stat. 482, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-905.)

§ 11-906. Administration by chief judge; discharge of duties.

(a) The chief judge shall administer and superintend the business of the Superior Court, as provided in chapter 17 of this title. The chief judge shall attend to the discharge of the duties pertaining to the office of chief judge and perform such additional judicial work as the chief judge is able to perform.

(b) The chief judge shall, insofar as is consistent with this title, arrange and divide the business of the Superior Court and fix the time of sessions of the various divisions and branches of the Superior Court. (July 29, 1970, 84 Stat. 483, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-906; June 13, 1994, Pub. L. 103-266, §§ 1(b)(10), (11), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

§ 11-907. Absence, disability, or disqualification of chief judge.

(a) When the chief judge of the court is absent or disabled, the chief judge's duties shall devolve upon and be performed by such associate judge as the chief judge may designate in writing. In the event that the chief judge is (1) disqualified or suspended, or (2) unable or fails to make such a designation, the chief judge's duties shall devolve upon and be performed by the associate judges of the court according to the seniority of their original commissions.

(b) A chief judge whose term as chief judge has expired shall continue to serve until redesignated or until a successor has been designated. When there is a vacancy in the position of chief judge, the position shall be filled temporarily as provided in subsection (a). (July 29, 1970, 84 Stat. 483, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-907; June 13, 1994, Pub. L. 103-266, §§ 1(b)(12), (13), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

§ 11-908. Designation and assignment of judges.

(a) The chief judge may designate the number of judges to serve in any division and branch of the Superior Court and may assign and reassign any judge to sit in any division or branch. When making assignments to the Family Division and Tax Division, the chief judge shall consider the qualifications and interest of the judges. Each associate judge shall attend and serve in the division and branch to which assigned.

(b) When the business of the Superior Court requires, the chief judge may certify to the chief judge of the District of Columbia Court of Appeals the need for temporary assignment of an additional judge or judges as provided in section 11-707.

(c) Upon presentation of a certificate of necessity by the chief judge of the Superior Court, the chief judge of the United States Court of Appeals for the District of Columbia Circuit may designate and assign temporarily a judge or judges as provided in subsection (c) of section 292 of title 28, United States Code. (July 29, 1970, 84 Stat. 483, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-908; June 13, 1994, Pub. L. 103-266, § 1(b)(14), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (a) to remove gender-specific references.

Cited in Snyder v. Revercomb, 110 WLR 1713 (Super. Ct. 1982).

§ 11-909. Meetings and reports.

(a) The judges of the Superior Court shall meet upon the call of the chief judge, but not less than once each month, to consider matters relating to the business and operations of the court. The court may by rule require additional meetings.

(b) Each associate judge shall submit to the chief judge such reports and data as the chief judge may request. Each judge shall submit a monthly written report to the chief judge and the Commission on Judicial Disabilities and Tenure which shall be in a form prescribed by the chief judge after consultation with the Commission and which shall set forth the duties performed by the reporting judge as follows:

(1) The number of days' attendance in court of the judge during the month covered.

(2) The division and branch (if any) of the court which the judge attended.

(3) The number of hours per day of the judge's attendance.

(4) The number and type of matters disposed of by the judge during the months covered.

(5) Such other data as the chief judge may require. (July 29, 1970, 84 Stat. 483, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-909; June 13, 1994, Pub. L. 103-266, §§ 1(b)(15), (16), 108 Stat. 713.)

Section references. — This section is referred to in § 11-1730. 266 amended (b)(2) and (b)(3) to remove gender-specific references.

Effect of amendments. — Public Law 103-

§ 11-910. Clerks and secretaries for judges.

Each judge of the Superior Court may appoint and remove a personal law clerk and a personal secretary. (July 29, 1970, 84 Stat. 484, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-910.)

Cited in *Andrade v. Jackson*, App. D.C., 401 A.2d 990 (1979).

Subchapter II. Jurisdiction.

§ 11-921. Civil jurisdiction.

(a) Except as provided in subsection (b), the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia. Such jurisdiction shall vest in the court as follows:

(1) Beginning on the effective date of the District of Columbia Court Reorganization Act of 1970, the court has jurisdiction of any civil action or other matter begun before such effective date in the District of Columbia Court of General Sessions, the Juvenile Court of the District of Columbia, or the District of Columbia Tax Court.

(2) Beginning on such effective date, the court has jurisdiction of any civil action or other matter, at law or in equity, which is begun in the Superior Court on or after such effective date and in which the amount in controversy does not exceed \$50,000.

(3) Beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy) of any civil action or other matter, at law or in equity, which —

(A) is brought under —

- (i) subchapter I of chapter 11 of title 16 (relating to ejectment);
- (ii) subchapter II or III of chapter 13 of title 16 (relating to the condemnation of land on behalf of the District of Columbia);
- (iii) chapter 19 of title 16 (relating to writs of habeas corpus directed to persons other than Federal officers and employees);
- (iv) chapter 25 of title 16 (relating to change of name);
- (v) chapter 33 of title 16 (relating to quieting title to real property);
- (vi) subchapter II of chapter 35 of title 16 (relating to writ of quo warranto);
- (vii) chapter 37 of title 16 (relating to replevin of personal property);
- (viii) the Hospital Treatment for Drug Addicts Act for the District of Columbia (D.C. Code, secs. 24-601 through 24-611) (relating to commitment of narcotics users); or
- (ix) section 2 of the Act of August 3, 1968 (D.C. Code, sec. 1-804b [1-1105]) (relating to contractors bonds).

(B) involves an appeal from or petition for review of any assessment of tax (or civil penalty thereon) made by the District of Columbia; or

(C) is brought under chapter 23 of title 16.

(4) Immediately following the expiration of the eighteen-month period beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy) of any civil action or other matter, at law or in equity, brought under —

- (A) chapter 3 of title 21 (relating to gifts to minors);
- (B) chapter 5 of title 21 (relating to hospitalization of the mentally ill);
- (C) chapter 7 of title 21 (relating to property of the mentally ill);
- (D) chapter 11 of title 21 (relating to commitment and maintenance of substantially retarded persons);
- (E) chapter 13 of title 21 (relating to appointment of committees for alcoholics and addicts);
- (F) chapter 15 of title 21 (relating to appointment of conservators); or
- (G) chapter 3, 7, 11, 13, or 15 of title 21 in the United States District Court for the District of Columbia and not completed in that court before the expiration of such eighteen-month period.

(5) Immediately following the expiration of the thirty-month period beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy) —

- (A) of any matter (at law or in equity) —
 - (i) brought under chapter 29 of title 16 (relating to partition of property and assignment of dower);
 - (ii) which would have been within the jurisdiction of the Orphans Court of Washington County, District of Columbia before June 21, 1870;
 - (iii) relating to the execution or validity of wills devising real property within the District of Columbia, and of wills and testaments properly presented for probate in the court, and the admission to probate and recording of those wills;
 - (iv) relating to the proof of wills of either personal or real property and the revocation of probate of wills for cause;

(v) involving the granting and revocation for cause of letters testamentary, letters of administration, letters ad colligendum and letters of guardianship, and the appointment of successors to persons whose letters have been revoked;

(vi) involving the hearing, examination, and issuance of decrees upon accounts, claims, and demands existing between executors or administrators and legatees or persons entitled to a distributive share of an intestate estate, or between wards and their guardians;

(vii) involving the enforcement of the rendition of inventories and accounts by executors, administrators, collectors, guardians, and trustees required to account to the court;

(viii) involving the enforcement of distribution of estates by executors and administrators and the payment or delivery by guardians of money or property belonging to their wards; or

(ix) otherwise within the probate jurisdiction of the United States District Court for the District of Columbia on the day before such effective date; and

(B) any matter (at law or in equity) described in subparagraph (A) which was begun in the United States District Court for the District of Columbia and not completed in that court before the expiration of such thirty-month period.

(6) Immediately following the expiration of the thirty-month period beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy) of any civil action or other matter, at law or in equity, brought in the District of Columbia.

(b) The Superior Court does not have jurisdiction over any civil action or other matter (1) over which exclusive jurisdiction is vested in a Federal court in the District of Columbia, or (2) over which jurisdiction is vested in the United States District Court for the District of Columbia under section 11-501 (relating to civil actions or other matters begun in such court before the expiration of the thirty-month period beginning on the effective date of the District of Columbia Court Reorganization Act of 1970). (July 29, 1970, 84 Stat. 484, Pub. L. 91-358, title I, § 111; Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, § 2(a)(1); 1973 Ed., § 11-921.)

Cross references. — As to provisions of District Charter relating to jurisdiction of Superior Court, see § 431 of Appendix to this title.

Section references. — This section is referred to in §§ 1-1211, 11-501, and 16-601.

References in text. — “The effective date of the District of Columbia Court Reorganization Act of 1970,” referred to throughout this section, means, as set forth in § 199(c) of the Act, the first day of the seventh calendar month which began after the enactment of the Act.

In subsection (a)(3)(A)(ix) of this section, “1-1105” was inserted, in brackets, to reflect the renumbering of sec. 1-804b in the 1981 Edition of the D.C. Code.

“Chapter 7 of title 21,” referred to in subsection

(a)(4)(C), was repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

“Chapter 13 of title 21,” referred to in subsection (a)(4)(E), was repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

“Chapter 15 of title 21,” referred to in subsection (a)(4)(F), was repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

“Chapters 7, 13, 15 of title 21,” referred to in subsection (a)(4)(G), were repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

Dual court system was abolished with enactment of this section. *Andrade v. Jackson*, App. D.C., 401 A.2d 990 (1979).

Superior Court is no longer a court of limited jurisdiction, but a court of general jurisdiction with the power to adjudicate any

civil action at law or in equity involving local law. *Andrade v. Jackson*, App. D.C., 401 A.2d 990 (1979).

Authority over all local matters. — Superior Court, with its fiduciary and probate jurisdiction, is fully empowered to exercise its rightful authority over all local matters. *Shutack v. Shutack*, 516 F. Supp. 219 (D.D.C. 1981).

Trust matters are the type of local matter that Congress intended the Superior Court to adjudicate. *Brown v. Edes Home*, 118 WLR 1277 (Super. Ct. 1990).

Effect of section on jurisdiction of Superior and District Courts. — This section gives the Superior Court plenary jurisdiction over civil matters brought in the District of Columbia and correspondingly limits the civil jurisdiction of the District Court to those special matters of which the federal district courts nationwide may take cognizance. *Reichman v. Franklin Simon Corp.*, App. D.C., 392 A.2d 9 (1978).

In establishing a unified local court system with this section Congress divested the federal courts of jurisdiction over local matters, restricting those courts to those matters generally viewed as federal business, and conferred upon the Superior Court the jurisdictional power to adjudicate local civil actions. *Andrade v. Jackson*, App. D.C., 401 A.2d 990 (1979).

Probate Court is division of Superior Court. — Subsection (a) grants the Superior Court jurisdiction over any civil action or other matter in law or equity in the District of Columbia, and subsection (a)(5) makes a specific grant of probate jurisdiction to the Superior Court. Thus, the "Probate Court" has become a division of the Superior Court that shares its general powers. *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987).

Jurisdiction over related claims. — Where the claim has a rational nexus to a subject matter within the responsibility of a division, the division may rely upon its general powers in accepting jurisdiction over the claim. *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987); *Farmer v. Farmer*, App. D.C., 526 A.2d 1365 (1987).

Subject matter jurisdiction on appeal. — The District of Columbia adheres to the traditional rule that a party's acquiescence in the trial court's exercise of subject matter jurisdiction, or a waiver of a defense of lack of subject matter jurisdiction, indicated by the failure to raise the defense before or during trial, does not preclude that party from raising the issue on appeal. *King v. Kidd*, App. D.C., 640 A.2d 656 (1993).

Jurisdiction over common law claims. — Unless the legislature has divested the Superior Court of jurisdiction of a particular subject matter through enactment of legislation, the court has general jurisdiction under this sec-

tion over common law claims for relief. *King v. Kidd*, App. D.C., 640 A.2d 656 (1993).

Jurisdiction to adjudicate paternity. — The Superior Court has jurisdiction to adjudicate paternity where a complaint is filed that pleads a sufficient cause of action, without a claim for support, showing it is not an abstract controversy. *In re D.M.*, App. D.C., 562 A.2d 618 (1989).

Where neither custody, divorce nor child support is sought, the jurisdictional basis of a paternity action is the general equity jurisdiction of the Superior Court. *In re D.M.*, App. D.C., 562 A.2d 618 (1989).

Transfer of inappropriate cases to proper divisions. — This general jurisdictional grant does not mean that each individual division of the Superior Court has power beyond its court rules or its relevant statutory subject matters. Each division is entrusted with a specific responsibility, each must follow the pertinent statutory mandates, and each must transfer inappropriate cases to the proper division. *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987).

Juvenile actions pending would proceed to conclusion in superior court. — The clear import of the language in paragraph (1) of subsection (a) of this section is that Congress intended that actions pending in the Juvenile Court would not be terminated, but would proceed to conclusion in the appropriate division of the new Superior Court. *Cupo v. District of Columbia*, App. D.C., 285 A.2d 696 (1972).

Jurisdiction over pendent tort claim in sexual harassment case. — Public employees do not lose their common law rights to sue for their injuries when neither those injuries nor their consequences trigger the exclusive provisions of the Comprehensive Merit Personnel Act. Where there was no evidence that the Council of the District of Columbia intended to divest the Superior Court of its preexisting jurisdiction to hear intentional infliction of emotional distress claims arising out of allegations of government workplace sexual harassment and subsequent retaliation, the Superior Court had jurisdiction to hear both appellee's sexual harassment claim and her interrelated or pendent tort claim. *King v. Kidd*, App. D.C., 640 A.2d 656 (1993).

Recovery limited to jurisdictional limit at time of filing. — Plaintiff who had commenced personal injury action in the Court of General Sessions, which had a jurisdictional limit of \$10,000, could not recover an amount in excess of \$10,000 although the case was tried in the Superior Court, which was the statutory successor to the Court of General Sessions and had a higher jurisdictional limit. *Newman v. Coakley*, App. D.C., 285 A.2d 690 (1972).

Where a complaint for personal injuries in

amount of \$10,000 was filed and the jurisdictional limit in civil actions was thereafter raised in the District of Columbia Court of General Sessions, granting of motion to amend the ad damnum of the complaint from \$10,000 to \$50,000 was error since Congress deliberately intended to limit recovery in cases originally docketed to the maximum amount then in effect. *D.C. Transit Sys. v. McLeod*, App. D.C., 300 A.2d 440 (1973).

Excessive verdict properly reduced to jurisdictional limit. — The trial court did not abuse its discretion in curing an excessive verdict by reducing the amount recovered to court's jurisdictional maximum rather than ordering a new trial. *Freedmen's Hosp. v. Heath*, App. D.C., 318 A.2d 593 (1974).

Small claims jurisdiction. — Since amount in controversy did not exceed \$2,000, and since the action did not affect any interest in real property and was for the recovery of money only, exclusive jurisdiction was within the Small Claims and Conciliation Branch. *Robinson v. Roberts*, 122 WLR 521 (Super. Ct. 1994).

Administrative remedies must be exhausted before judicial relief may be sought. *O'Neill v. Starobin*, App. D.C., 364 A.2d 149 (1976).

Partition and other matters incidental to real estate actions. — Partition actions and other matters incidental to real property actions are considered local civil actions and are no longer within the jurisdiction of the United States District Court. *Coll v. Coll*, 690 F. Supp. 1085 (D.D.C. 1988).

Fiduciary account cases may be transferred to Superior Court. — The intent of the Court Reform Act and the broad language of subsection (a)(5)(A) of this section persuasively establish that the Act provides for the transfer of cases involving accounts by fiduciaries to the Superior Court. In *re Estate of Shutack*, App. D.C., 469 A.2d 427 (1983).

Trustees' accounting duties are governed by subsection (a)(5)(A)(vii) of this section, which vests the Superior Court with jurisdiction. *Shutack v. Shutack*, 516 F. Supp. 219 (D.D.C. 1981).

Meaning of subsection (a)(5)(B). — Subsection (a)(5)(B) of this section refers to any matter begun and not completed in the 30-month period following the effective date of the District of Columbia Court Reorganization Act of 1970. *Chumbris v. Chaconas*, 110 WLR 1521 (Super. Ct.).

Jurisdiction under subsection (a)(5)(B) not limited to matters beginning during 30-month period. — The transfer of jurisdiction over all matters of a local nature to local courts under subsection (a)(5)(B) of this section was not confined to matters beginning only during the 30-month transition period provided

in the Court Reform Act. In *re Estate of Shutack*, App. D.C., 469 A.2d 427 (1983).

And District Court jurisdiction excludes actions related to trustees. — The exception under the Court Reorganization Act of 1970 for matters to be retained by the District Court explicitly excludes actions related to the filing of accounts and inventories by trustees. *Shutack v. Shutack*, 516 F. Supp. 219 (D.D.C. 1981).

Matters relating to the appointment, compensation, and duties of trustees are purely local matters, and by the Court Reorganization Act of 1970, Congress intended to terminate the anomaly in the District of federal trial and appellate judges being required to devote their time and energy to matters of a purely local nature. *Shutack v. Shutack*, 516 F. Supp. 219 (D.D.C. 1981).

Jurisdiction over trust cases existing before effective date of District of Columbia Court Reorganization Act of 1970. — The District of Columbia Court Reorganization Act of 1970 did not vest in the Superior Court trust cases in existence before the effective date of the Act, nor vest any jurisdiction at all in the Probate Division of Superior Court over trust cases. *Chumbris v. Chaconas*, 110 WLR 1521 (Super. Ct.).

No jurisdiction over action brought under Federal Trade Commission Act. — The Superior Court is without jurisdiction over an action brought under Federal Trade Commission Act to enjoin alleged unfair methods of competition and deceptive acts and practices. *Karpoff v. Holladay Corp.*, App. D.C., 377 A.2d 52 (1977).

No minimum contacts required. — There does not need to be some minimum contact with the District of Columbia before the Superior Court can exercise its civil jurisdiction; a transitory cause of action may be brought in any court of general jurisdiction where jurisdiction over the defendant can be obtained. *Robinson v. Roberts*, 122 WLR 521 (Super. Ct. 1994).

Equity power in rent control field. — By specifically vesting the Superior Court with jurisdiction to review Rent Commission's decisions, Congress gave statutory recognition to authority of Court to use its equity power in rent control field. *Columbia Realty Venture v. District of Columbia Hous. Rent Comm'n*, App. D.C., 350 A.2d 120 (1975).

The Superior Court did not abuse its discretion in exercising equitable jurisdiction in a case in which landlord sought to have a rent control regulation declared invalid. *Apartment & Office Bldg. Ass'n v. Washington*, App. D.C., 343 A.2d 323 (1975).

The Superior Court, rather than the District of Columbia Court of Appeals, has jurisdiction to review Housing Rent Commission's decision affirming order allowing landlord to increase

rents charged at apartment building so as to insure return on investment. *Columbia Realty Venture v. District of Columbia Hous. Rent Comm'n*, App. D.C., 350 A.2d 120 (1975).

Jurisdiction over action for visitation rights stems from general equitable powers of the Superior Court rather than from § 11-1101, which relates to the jurisdiction of the Family Division of the Superior Court. *Felder v. Allsopp*, App. D.C., 391 A.2d 243 (1978).

Jurisdiction to enjoin unlawful practice of law. — Even in the absence of statutory enactments, the Superior Court has jurisdiction to enjoin the conduct of a person engaged in the unlawful practice of law. *J.H. Marshall & Assocs. v. Burleson*, App. D.C., 313 A.2d 587 (1973).

Jurisdiction of a division of the Superior Court. — There is no jurisdictional bar to one division of the Superior Court entertaining an action more appropriately considered in another division, so long as doing so does not violate the statute or rules of the Court and the claim has a rational nexus to a subject matter within the responsibility of that division. *Clay v. Faison*, App. D.C., 583 A.2d 1388 (1990).

Jurisdiction to grant specific performance of marital property settlement. — It was appropriate for the family division of the Superior Court, under its general equity powers, to consider plaintiff's claim for specific performance of marital property settlement in view of the nexus between plaintiff's claims and the responsibilities of the family division, and fact that the agreement was not merged into divorce decree had no bearing on the family division's jurisdiction to hear the claim since it is generally entrusted with resolving property disputes between spouses. *Clay v. Faison*, App. D.C., 583 A.2d 1388 (1990).

Jurisdiction over decisions of the State Health Planning and Development Agency. — Although the Court of Appeals has direct appellate jurisdiction over decisions of the State Health Planning and Development Agency (SHPDA), following an appeal to the Board of Appeals and Review, the Superior Court had original jurisdiction to entertain a suit in which Georgetown residents sought to prevent the District from offering a new institutional health service without SHPDA ap-

proval. *Speyer v. Barry*, App. D.C., 588 A.2d 1147 (1991).

Writs of ne exeat within equitable jurisdiction. — As an adjunct to the trial court's equitable jurisdiction, the issuance, terms, and implementation of writs of ne exeat (writs in the nature of civil bail) lie within the court's sound discretion. *Gredone v. Gredone*, App. D.C., 361 A.2d 176 (1976).

Enforcement of compensation order of the Mayor or the administrative agency delegated the authority to issue such an order falls within the equitable jurisdiction vested in the Superior Court. *District of Columbia v. Greater Wash. Cent. Labor Council*, App. D.C., 442 A.2d 110 (1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 486 (1983).

Cited in In re I.B. v. District of Columbia Dep't of Human Resources, App. D.C., 287 A.2d 827 (1972); *Colbert Refrigeration Co. v. Edwards*, App. D.C., 356 A.2d 331 (1976); *Malloy v. Safeway Stores, Inc.*, App. D.C., 360 A.2d 48 (1976); *National Sav. & Trust Co. v. Rosendorf*, 559 F.2d 837 (D.C. Cir. 1977); *Bennings Assocs. v. Joseph M. Zamoiski Co.*, App. D.C., 379 A.2d 1171 (1977); *Campbell v. McGruder*, 580 F.2d 521 (D.C. Cir. 1978); *Rieser v. District of Columbia*, 580 F.2d 647 (D.C. Cir. 1978); *Kuhn v. Cissel*, App. D.C., 409 A.2d 182 (1979); *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981); *District of Columbia v. White*, App. D.C., 442 A.2d 159 (1982); *A & G Ltd. Partnership v. Joint Comm. on Landmarks of Nat'l Capital*, App. D.C., 449 A.2d 291 (1982); *Qasim v. Washington Metropolitan Area Transit Auth.*, App. D.C., 455 A.2d 904, cert. denied, 461 U.S. 929, 103 S. Ct. 2090, 77 L. Ed. 2d 300 (1983); *Ali Baba Co. v. Wilco, Inc.*, App. D.C., 482 A.2d 418 (1984); *In re Tyree*, App. D.C., 493 A.2d 314 (1985); *Butler v. District of Columbia Dep't of Pub. Works*, 115 WLR 949 (Super. Ct. 1987); *Tenley & Cleveland Park Emergency Comm. v. District of Columbia*, 115 WLR 1973 (Super. Ct. 1987); *Wallace v. Occupant*, 115 WLR 2377 (Super. Ct. 1987); *K.A.E. v. Manuel*, 115 WLR 2589 (Super. Ct. 1987); *Rosenberg v. Rosenberg*, 116 WLR 1469 (Super. Ct. 1988); *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989); *Garland v. Cobb*, 117 WLR 1365 (Super. Ct. 1989); *In re J.E.C.*, 117 WLR 2485 (Super. Ct. 1989); *Hessey v. Burden*, App. D.C., 615 A.2d 562 (1992); *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

§ 11-922. Transfer of civil actions to Superior Court.

(a) In a civil action begun in the United States District Court for the District of Columbia before the effective date of the District of Columbia Court Reorganization Act of 1970 (other than an action for equitable relief), where it appears to the satisfaction of the court at or subsequent to any pretrial hearing but before trial thereof that the action will not justify a judgment in excess of

\$10,000 and does not otherwise invoke the jurisdiction of the court, the court may certify the action to the Superior Court for trial.

(b) In a civil action begun in the United States District Court for the District of Columbia during the thirty-month period beginning on the effective date of the District of Columbia Court Reorganization Act of 1970, the court may certify the action to the Superior Court if it appears to the satisfaction of the United States District Court at or subsequent to any pretrial hearing, but before the trial thereof, that —

(1) the action will not justify a judgment in excess of \$50,000; and

(2) the action does not otherwise invoke the jurisdiction of the court.

(c) When an action is transferred under this section, the pleadings in the action, together with a copy of the docket entries and copies of any orders entered therein, and the deposit for costs, shall be sent to the Superior Court. The Superior Court shall thereafter treat the case as though it had been filed originally in that court, except that the jurisdiction of the court shall extend to the amount claimed in the action even though it exceeds the applicable jurisdictional limitation. (July 29, 1970, 84 Stat. 486, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-922.)

Cross references. — As to provisions of District Charter relating to jurisdiction of Superior Court, see § 431 of Appendix to this title.

References in text. — “The effective date of the District of Columbia Court Reorganization Act of 1970” referred to throughout this section, means, as set forth in § 199(c) of the Act, the first day of the seventh month which began after the enactment of the Act.

Certification rests in discretion of District Court. — Exercise of general authority to certify cases to courts of local jurisdiction rests in sound discretion of the District Court. *James v. Lusby*, 499 F.2d 488 (D.C. Cir. 1974).

Standard for review of order of certification from District Court to Superior Court is whether or not the trial court abused its discretion. *Block v. District of Columbia*, 492 F.2d 646 (D.C. Cir. 1974).

Statement of reasons for certification required. — It is an abuse of discretion to certify a case to the Superior Court in the absence of any statement of reasons for the certification by the District Court. *Block v. District of Columbia*, 492 F.2d 646 (D.C. Cir. 1974).

Certification permitted only where federal jurisdiction not invoked. — The United States District Court for the District of Columbia may certify a cause to the Superior Court of the District of Columbia only if the District Court finds that the amount in controversy is not satisfied and that federal jurisdiction is not otherwise invoked. *Apton v. Wilson*, 506 F.2d 83 (D.C. Cir. 1974).

“Federal questions” jurisdiction prevents certification. — Where individuals,

who were allegedly arrested during the “May-day Demonstrations” of May, 1971, asserted claims against District of Columbia police officers and chief of police which arose directly under Fourth and Fifth Amendments, the United States District Court had “federal question” jurisdiction and it was improper to certify the cases against the District of Columbia defendants to the Superior Court. *Apton v. Wilson*, 506 F.2d 83 (D.C. Cir. 1974).

Affirmative duty of District Court to determine amount in controversy. — Where there was an issue before the District Court whether or not the record before it showed that the amount in controversy exceeded \$10,000, the determination of such issue was preliminary to the court’s assumption of jurisdiction, and it was the affirmative duty of the trial court to inquire into such issue, whether or not it was raised by parties. *James v. Lusby*, 499 F.2d 488 (D.C. Cir. 1974).

Standard for determining amount. — The standard to be applied by the trial court in certifying a case to a court of local jurisdiction is that the sum claimed by plaintiff controls if the claim is apparently made in good faith. *James v. Lusby*, 499 F.2d 488 (D.C. Cir. 1974).

Both compensatory and punitive damages are to be considered in determining the amount in controversy for jurisdictional purposes. *James v. Lusby*, 499 F.2d 488 (D.C. Cir. 1974).

Action not certifiable under subsection (a). — Where action seeks substantial declaratory and equitable relief, including injunctions and cancellation of notes and deeds of trust, it is not certifiable to the Superior Court under subsection (a) of this section. *Hines v. City Fin. Co.*, 474 F.2d 430 (D.C. Cir. 1972).

“Action for equitable relief” construed.

— The language “other than an action for equitable relief” in subsection (a) of this section is not intended to cover what is essentially a legal action which seeks equitable relief only of a character incidental to the main legal thrust of the action. *Hines v. City Fin. Co.*, 474 F.2d 430 (D.C. Cir. 1972).

Case may be transferred in interlocutory posture. — “Action” as used in subsection (b) of this section refers not only to a case prior to rulings and interlocutory orders but also to a case in any posture prior to disposition, and a case may be transferred to Superior Court in an interlocutory posture. *Reichman v. Franklin Simon Corp.*, App. D.C., 392 A.2d 9 (1978).

Transferred case treated as if originated in Superior Court. — Congress intended that cases transferred under subsection (b) of this section be treated as if they had been brought initially in Superior Court. *Reichman v. Franklin Simon Corp.*, App. D.C., 392 A.2d 9 (1978).

Even as to interlocutory rulings. — Where the District Court has entered an interlocutory order, subsequent transfer of the case under subsection (b) of this section empowers the Superior Court to treat the order as its own and empowers review of the order on appeal. *Reichman v. Franklin Simon Corp.*, App. D.C., 392 A.2d 9 (1978).

Cited in *Rieser v. District of Columbia*, 580 F.2d 647 (D.C. Cir. 1978).

§ 11-923. Criminal jurisdiction; commitment [commitment].

(a) The Superior Court has jurisdiction over all criminal cases pending in the District of Columbia Court of General Sessions before the effective date of the District of Columbia Court Reorganization Act of 1970.

(b)(1) Except as provided in paragraph (2), the Superior Court has jurisdiction of any criminal case under any law applicable exclusively to the District of Columbia.

(2) The Superior Court shall not have jurisdiction of any criminal case under any law applicable exclusively to the District of Columbia begun in the United States District Court for the District of Columbia under section 11-502 (2) by the return of an indictment or the filing of an information during the eighteen-month period beginning on such effective date.

(c)(1) With respect to any criminal case over which the Superior Court has jurisdiction, that court may make preliminary examinations and commit offenders, either for trial or for further examination, and may release or detain offenders in accordance with chapter 13 of title 23.

(2) With respect to any criminal case over which the United States District Court for the District of Columbia has jurisdiction, the Superior Court (A) may make preliminary examinations and commit offenders, either for trial or for further examination, but only during the eighteen-month period beginning on the effective date of the District of Columbia Court Reorganization Act of 1970, and (B) may release or detain offenders in accordance with chapter 13 of title 23. (July 29, 1970, 84 Stat. 486, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-923.)

References in text. — “The effective date of the District of Columbia Court Reorganization Act of 1970,” referred to throughout this section, means, as set forth in § 199(c) of the Act, the first day of the seventh month which began after the enactment of the Act.

Editor’s notes. — In the catchline to this section, “commitment” was added, in brackets, to correct a misspelling.

Jurisdiction must be proved beyond a reasonable doubt. — *Mitchell v. United States*, App. D.C., 569 A.2d 177, cert. denied, 498 U.S. 986, 111 S. Ct. 521, 112 L. Ed. 2d 532 (1990).

Jurisdiction over local felonies constitutional. — Congress did not violate the United States Constitution by vesting jurisdiction over local felonies in the Superior Court. *Palmore v.*

United States, App. D.C., 290 A.2d 573 (1972), aff'd, 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342 (1973).

Under its constitutional power to legislate for the District of Columbia, Congress may provide for trying local criminal cases before judges who, in accordance with the District of Columbia Code, are not accorded life tenure or protection against reduction in salary. *Palmore v. United States*, App. D.C., 290 A.2d 573 (1972), aff'd, 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342 (1973).

Language suggests geographical limitation on jurisdiction. — Unlike § 11-1101 governing Family Division jurisdiction, the language of subsection (b)(1) of this section suggests a geographical limitation on jurisdiction. In *re A.S.W.*, App. D.C., 391 A.2d 1385 (1978); *Mundine v. United States*, App. D.C., 431 A.2d 16 (1981).

The jurisdiction of the Criminal Division of the Superior Court is limited to criminal acts which occur within the geographical boundaries of the District of Columbia. *United States v. Baish*, App. D.C., 460 A.2d 38 (1983).

No jurisdiction over United States Code offenses. — This section was intended to divest the Superior Court of jurisdiction to hear criminal cases involving United States Code offenses. *Thompson v. United States*, 548 F.2d 1031 (D.C. Cir. 1976); *Jackson v. United States*, App. D.C., 441 A.2d 1000 (1982).

Presumption of jurisdiction in court where charge filed. — It is presumed that an offense charged was committed within the jurisdiction of the court in which the charge is filed unless the evidence affirmatively shows otherwise. *Adair v. United States*, App. D.C., 391 A.2d 288 (1978).

Locality of crime includes place where part of act done. — Wherever any part of a criminal act is done, that place becomes as much the locality of the crime as is the place where the crime may have culminated. *Adair v. United States*, App. D.C., 391 A.2d 288 (1978).

Trial court had jurisdiction where the defendant, convicted of armed robbery, assault with a dangerous weapon and mayhem and malicious disfigurement, approached complainant in his car within the District of Columbia, rode with complainant into Maryland, returned with him to the District and was overheard threatening the complainant with injury if he did not remain silent while at an intersection concededly within the District. *Adair v. United States*, App. D.C., 391 A.2d 288 (1978).

Where a criminal act committed in the District serves as 1 of several constituent elements to the complete offense, there is jurisdiction to prosecute in the Superior Court, even though the remaining elements occurred outside of the District. *United States v. Baish*, App. D.C., 460 A.2d 38 (1983).

"Any law" construed. — "Any law" as used in paragraph (1) of subsection (b) of this section, does not mean "any statute" but means any distinct, self-contained directive or prohibition; thus it is not required that a statutory section in its entirety apply exclusively to the District in order for the Superior Court to have jurisdiction of any prohibition contained in the statute. *United States v. Thompson*, App. D.C., 347 A.2d 581 (1975).

Existence of federal statute does not prevent prosecution under local law. — Where the same act constitutes both a federal offense and a state offense under the police power, the state may prosecute as the mere existence of a similar federal statute does not prevent prosecution under local law for the same offense. *McEachin v. United States*, App. D.C., 432 A.2d 1212 (1981).

The ability to prosecute a case in a federal or foreign state court does not deprive the Superior Court of its jurisdiction, and this section does not limit its jurisdiction to only when a criminal case may be brought exclusively in the District of Columbia. *Colbert v. United States*, App. D.C., 601 A.2d 603 (1992).

Superior Court does not have jurisdiction over an alleged violation of a National Capital Parks Regulation because it is not applicable exclusively to the District of Columbia. *Hubbell v. United States*, App. D.C., 289 A.2d 879 (1972).

Local courts may issue writs of habeas corpus ad prosequendum. — Since Congress in reforming the District of Columbia court system could not have intended to remove the local court's power to issue writs of habeas corpus ad prosequendum, that authority still exists under the All Writs Act (28 U.S.C. § 1651). *United States v. Cogdell*, 585 F.2d 1130 (D.C. Cir. 1978), cert. denied, 440 U.S. 963, 99 S. Ct. 1497, 59 L. Ed. 2d 770 (1979), rev'd on other grounds sub nom. *United States v. Bailey*, 444 U.S. 394, 100 S. Ct. 624, 62 L. Ed. 2d 575 (1980).

Motion to expunge a record of arrest is not a "criminal case," and civil rules govern, even though the motion has its origin in a criminal charge. *Irani v. District of Columbia*, App. D.C., 292 A.2d 804 (1972).

Decision of United States Court of Appeals not binding. — The Superior Court is not bound by a decision of the United States Court of Appeals released subsequent to the effective date of the Court Reorganization Act of 1970. *Bethea v. United States*, App. D.C., 365 A.2d 64 (1976), cert. denied, 433 U.S. 911, 97 S. Ct. 2979, 53 L. Ed. 2d 1095 (1977).

District Court limitations as to probation not applicable to Superior Court. — When Congress gave the Superior Court plenary jurisdiction over local criminal offenses, it did not provide that existing limitations on the

power of the District Court for the District of Columbia to grant probation would restrict the Superior Court in the exercise of its new authority. *Sanker v. United States*, App. D.C., 374 A.2d 304 (1977).

Application for mandamus does not deprive Court of jurisdiction. — An application for a writ of mandamus filed with the Court of Appeals does not deprive the Superior Court of its general jurisdiction. *Clark v. Taylor*, 627 F.2d 284 (D.C. Cir. 1980).

Jurisdictional determination made by court, not jury. — The question of where the alleged offense took place is a jurisdictional determination for the court, not the jury. *Mundine v. United States*, App. D.C., 431 A.2d 16 (1981); *Mitchell v. United States*, App. D.C., 569 A.2d 177, cert. denied, 498 U.S. 986, 111 S. Ct. 521, 112 L. Ed. 2d 532 (1990).

Criminal provisions applicable to all nonexempt federally owned property. — The criminal provisions of the D.C. Code apply to all property owned by the United States in the District of Columbia unless such property is expressly exempt from coverage by Congress. *McEachin v. United States*, App. D.C., 432 A.2d 1212 (1981).

Assaults on correctional officers. — Subsection (b)(1) of this section vests jurisdiction in the Superior Court to try assaults on correctional officers charged under § 22-505(a) when the assault was committed within the geographical boundaries of the District of Columbia. *Jackson v. United States*, App. D.C., 441 A.2d 1000 (1982).

Superior Court may exercise jurisdiction over offenses occurring on Bolling Air Force Base. — The Court Reform Act does not preclude the Superior Court of the District of Columbia from exercising jurisdiction over offenses occurring on Bolling Air Force Base.

McEachin v. United States, App. D.C., 432 A.2d 1212 (1981).

Evidence sufficient to establish jurisdiction over offense of making threats to do bodily harm. — Both the utterance and the communication of the threatening language are integral components of the offense of making threats to do bodily harm and proof that either component occurred within the District establishes a basis for prosecution in the Superior Court. *United States v. Baish*, App. D.C., 460 A.2d 38 (1983).

If a threat is heard by someone within the District of Columbia, the speaker threatens within the proscriptive ambit of § 22-507 — regardless of where she utters the threatening words. *United States v. Baish*, App. D.C., 460 A.2d 38 (1983).

Jurisdiction over conduct outside the District of Columbia. — Superior Court has jurisdiction over prosecutions for conduct in Maryland designed to obstruct the administration of justice in the courts of the District of Columbia. *Ford v. United States*, App. D.C., 616 A.2d 1245 (1992).

District has no jurisdiction when there is no evidence that offense occurred in District. — District of Columbia Court did not have jurisdiction to proceed against defendant on charge of receiving stolen property where there was no evidence that any act constituting the offense occurred within the District. *James v. United States*, App. D.C., 478 A.2d 1083 (1984).

Cited in *Jordan v. United States*, App. D.C., 350 A.2d 735 (1976); *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981); *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989); *Garland v. Cobb*, 117 WLR 1365 (Super. Ct. 1989); *Purcell v. United States*, App. D.C., 594 A.2d 527 (1991); *Thomas v. United States*, App. D.C., 650 A.2d 183 (1994).

§ 11-924. Jurisdiction with respect to violations of the Rules and Regulations of the Washington Metropolitan Area Transit Authority.

The Superior Court has jurisdiction with respect to any violation, committed in the District of Columbia, of the rules and regulations adopted by the Washington Metropolitan Area Transit Authority under section 76(e) of title III of the Washington Metropolitan Area Transit Regulation Compact. (1973 Ed., § 11-924; June 4, 1976, 90 Stat. 674, Pub. L. 94-306, § 3(a).)

References in text. — The Washington Metropolitan Area Transit Regulation Com-

pact, referred to at the end of this section, is codified in § 1-2431.

*Subchapter III. Miscellaneous Provisions.***§ 11-941. Issuance of warrants; record.**

Subject to title 23, judges of the Superior Court may, at any time, including Sundays and legal holidays, on complaint or application under oath or actual view, issue warrants for arrest, search or seizure, or electronic surveillance in connection with crimes and offenses committed within the District of Columbia, or for administrative inspections in connection with laws relating to the public health, safety, and welfare. Each proceeding respecting a warrant shall be recorded as prescribed by the court. Warrants shall be issued free of charge. (July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-941.)

Warrant issued outside District for execution within. — This section does not prevent a judge from issuing, outside the District, a search warrant for execution in the District. *United States v. Strother*, 578 F.2d 397 (D.C. Cir. 1978).

Cited in *United States v. Boettcher*, 588 F.2d 89 (D.C. Cir. 1978); *United States v. Laws*, 808 F.2d 92 (D.C. Cir. 1986).

§ 11-942. Subpenas [Subpoenas].

(a) The Superior Court may compel the attendance of witnesses by attachment. At the request of any party, subpenas [subpoenas] for attendance at a hearing or trial in the Superior Court shall be issued by the clerk of court. A subpena [subpoena] may be served at any place within the District of Columbia, or at any place without the District of Columbia that is within twenty-five miles of the place of the hearing or trial specified in the subpena [subpoena]. The form, issuance, and manner of service of the subpena [subpoena] shall be as prescribed by the rule of the court.

(b) A subpena [subpoena] in a criminal case in which a felony is charged may be served at any place within the United States upon order of a judge of the court. (July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-942.)

Editor's notes. — Throughout the section, "subpoena" and "subpoenas" were inserted, in brackets, to correct misspellings.

Purpose of subsection (b). — Subsection (b) of this section was enacted so that in felony cases the Superior Court would have the same subpoena power conferred on federal district courts. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

Felony and misdemeanor cases differentiated. — The language "in which a felony is charged" in subsection (b) of this section was not meant to deprive Superior Court grand juries investigating felony cases of nationwide subpoena power but rather was included only to differentiate between misdemeanor and felony cases, as in § 23-563. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert.

denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

Authority to issue writs ad testificandum extraterritorially is a necessary aid to and coextensive with the court's jurisdiction to issue nationwide subpoenas. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

And writ to produce prisoner for grand jury lineup. — The Superior Court, upon satisfying itself that a writ is in "necessary" aid of its jurisdiction within the meaning of 28 U.S.C. § 1651, may issue a writ of habeas corpus ad testificandum where it is necessary that a prisoner be produced pursuant to a grand jury subpoena commanding him to appear in a lineup. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442

U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

Subpoena power of grand jury. — A grand jury may subpoena a suspect and direct him to stand in a lineup. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

Superior Court grand jury has the power to direct subpoenas to persons beyond the territorial borders of the District. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

Continuing obligation to comply with subpoena. — Where subpoena served on a prospective witness in a criminal case specified a certain appearance date, but the prosecutor informed the witness that she would be informed by telephone of the exact date and time her testimony would be required, and she was notified to appear on a different date but failed to appear, the telephone standby procedure did

not vitiate the continuing efficacy of the subpoena and the witness's failure to appear was a criminal contempt of court and not merely a violation of prosecutor's direction to witness. In *re Ragland*, App. D.C., 343 A.2d 558 (1975).

Requirements to issue grand jury subpoenas. — Prior to giving judicial approval to the issuance of grand jury subpoenas *duces tecum* for the production of financial records, a grand jury case must be formally opened, the grand jury records must reflect on whom subpoenas will be served, and the subpoenas must be returnable on a specified date before a sitting grand jury. In *re Investigation of Violation of D.C. Code* § 22-3811, 112 WLR 909 (Super. Ct.).

Cited in *Mills v. Aetna Fire Underwriters Ins. Co.*, App. D.C., 511 A.2d 8 (1986); *United States v. Mitchell*, 114 WLR 1257 (Super. Ct. 1986); *Jenkins v. Smith*, App. D.C., 535 A.2d 1367 (1987); *Robinson v. Roberts*, 122 WLR 521 (Super. Ct. 1994).

§ 11-943. Process.

(a) All process other than a subpoena [subpoena] may be served at any place within the District of Columbia, and, when authorized by statute or by the Federal Rules of Civil Procedure, at any place without the District of Columbia.

(b) Service upon a third-party defendant, upon a person whose joinder is needed for just adjudication, and upon persons required to respond to any order of commitment for civil contempt may be served at all places outside the District of Columbia that are not more than one hundred miles from the place of hearing or trial specified.

(c) The form, issuance, and manner of service of process shall be prescribed by rule of the court. (July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-943.)

Editor's notes. — In subsection (a) of this section, "subpoena" was inserted, in brackets, to correct a misspelling.

Acceptance of service proven. — Defendant who appeared in the small claims clerks

office and accepted service voluntarily submitted to the personal jurisdiction of Superior Court. *Robinson v. Roberts*, 122 WLR 521 (Super. Ct. 1994).

§ 11-944. Contempt power.

(a) Subject to the limitation described in subsection (b), and in addition to the powers conferred by section 402 of title 18, United States Code, the Superior Court, or a judge thereof, may punish for disobedience of an order or for contempt committed in the presence of the court.

(b)(1) In any proceeding for custody of a minor child conducted in the Family Division of the Superior Court under paragraph (1) or (4) of section 11-1101, no individual may be imprisoned for civil contempt for more than 12 months (except as provided in paragraph (2)), pursuant to the contempt power

described in subsection (a), for disobedience of an order or for contempt committed in the presence of the court. This limitation does not apply to imprisonment for criminal contempt or for any other criminal violation.

(2) Notwithstanding the provisions of paragraph (1), an individual who is charged with criminal contempt pursuant to paragraph (3) may continue to be imprisoned for civil contempt until the completion of such individual's trial for criminal contempt, except that in no case may such an individual be imprisoned for more than 18 consecutive months for civil contempt pursuant to the contempt power described in subsection (a).

(3)(A) An individual imprisoned for 6 consecutive months for civil contempt for disobedience of an order in a proceeding described in paragraph (1) who continues to disobey such order may be prosecuted for criminal contempt for disobedience of such order at any time before the expiration of the 12-month period that begins on the first day of such individual's imprisonment, except that an individual so imprisoned as of the date of the enactment of this subsection may be prosecuted under this subsection at any time during the 90-day period that begins on the date of the enactment of this subsection.

(B) The trial of an individual prosecuted for criminal contempt pursuant to this paragraph —

(i) shall begin not later than 90 days after the date on which such individual is charged with criminal contempt;

(ii) shall, upon the request of the individual, be a trial by jury; and

(iii) may not be conducted before the judge who imprisoned the individual for disobedience of an order pursuant to subsection (a). (July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-944; Sept. 23, 1989, 103 Stat. 633, Pub. L. 101-97, § 2(a).)

Applicability of §§ 2 and 3 of Pub. L. 101-97. — Section 5 of Pub. L. 101-97 provided that the amendments made by §§ 2 and 3 shall apply with respect to any individual imprisoned before the expiration of the 18-month period that begins on the date of the enactment of this Act for disobedience of an order or for contempt committed in the presence of the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

"Civil" and "criminal" contempt distinguished. — "Civil" as distinguished from "criminal" contempt is a sanction to enforce compliance with an order of court or to compensate for losses or damages sustained by reason of noncompliance, and may be imposed for prohibited acts irrespective of intent. *Bolden v. Bolden*, App. D.C., 376 A.2d 430 (1977).

Elements of criminal contempt defined. — The offense of criminal contempt consists of a contemptuous act and a wrongful state of mind, both of which must be proved beyond a reasonable doubt. In *re Gorfkle*, App. D.C., 444 A.2d 934 (1982).

The elements of the offense of criminal contempt are: (1) Willful disobedience; (2) of a court order; and (3) causing an obstruction of

the orderly administration of justice. In *re Thompson*, App. D.C., 454 A.2d 1324 (1982).

Volitional act required for criminal contempt. — In order to convict an individual for criminal contempt, it is necessary to find beyond a reasonable doubt that the individual committed a volitional act that constitutes contempt. *Parker v. United States*, App. D.C., 373 A.2d 906 (1977).

A conviction for criminal contempt cannot be predicated solely on the defendant's being arrested on probable cause, since the volitional act would be the commission of a crime, not the matter of being arrested. *Parker v. United States*, App. D.C., 373 A.2d 906 (1977).

Alleged act of pointing a finger at a judge, a single non-verbal gesture, was ambiguous and thus required the elucidation that an adversarial hearing would have provided. *McCormick v. United States*, App. D.C., 635 A.2d 347 (1993).

Willful failure to appear in court as required may be punishable as contempt. In *re Kirk*, App. D.C., 413 A.2d 928 (1980).

Attorney's refusal to return to courtroom after receiving specific court order to do so merits the inference that the conduct was willful and contemptuous. In *re Schaeffer*, App. D.C., 370 A.2d 1362 (1977).

The deliberate and knowing violation of an order that the trial counsel return directly from another court for trial which has been postponed to enable the counsel to attend a hearing at the other court is a contempt committed "in the presence of the court" and is properly disposed of summarily, without a hearing before another judge. In *re Rosen*, App. D.C., 315 A.2d 151, cert. denied, 419 U.S. 964, 95 S. Ct. 224, 42 L. Ed. 2d 178 (1974).

Tardiness or nonappearance may be punished as contempt committed in presence of court. In *re Brown*, App. D.C., 320 A.2d 92 (1974).

Where counsel failed to appear at trial at designated time because of conflict brought about by scheduling of preliminary hearing at same time as trial, but counsel failed to contact trial court and advise it of the conflict, it was within trial court's discretion to treat counsel's tardiness as an act of contempt. In *re Hunt*, App. D.C., 367 A.2d 155 (1976), cert. denied, 434 U.S. 817, 98 S. Ct. 54, 54 L. Ed. 2d 72 (1977).

But not without finding of willfulness. — The record fails to sustain the arraignment judge's finding of willfulness on occasion when he held an attorney in criminal contempt because of the attorney's failure to make timely appearance at arraignment for which he had been appointed counsel; rather, the record shows that the attorney had become caught in a scheduling conflict between 2 judges, and had properly chosen to complete his appearance before the other judge before appearing for client's arraignment. In *re Denney*, App. D.C., 377 A.2d 1360 (1977).

Where an attorney did not consciously and intentionally absent himself from the court in a criminal case, the trial court erred in exercising its summary power to punish the attorney for contempt. In *re Brown*, App. D.C., 320 A.2d 92 (1974).

Absent a pattern of multiple and manifest violations of an order prohibiting leading on direct examination or circumstances showing a clear contumacious intent, it is unreasonable for a trial court to conclude that any given "failure to adhere to" such an order is necessarily intentional or reckless and contemptuous of the court's authority. In *re Gorfkle*, App. D.C., 444 A.2d 934 (1982).

Failure to obey court order. — Where appellant was committed for contempt until he obeyed a presumptively valid court order to supply handwriting exemplar, and his contemptuous conduct was committed in the presence of the court, his refusal to supply exemplar amounted to civil contempt for which procedures for formal notice and hearing in criminal contempt cases are not required. *Jennings v. United States*, App. D.C., 354 A.2d 855 (1976).

Where a defendant refuses the admonitions

of the court, his conduct may be adjudicated to be contemptuous. *Irby v. United States*, App. D.C., 342 A.2d 33 (1975).

Failure to make good-faith attempt to comply with court order to sell realty merits sanction of civil contempt adjudication. *Bolden v. Bolden*, App. D.C., 376 A.2d 430 (1977).

Although a trial court should not hesitate to correct or even caution counsel when an improper question is asked, it goes too far when it seeks to ensure compliance with its initial warning by threatening counsel with a contempt citation. In *re Gorfkle*, App. D.C., 444 A.2d 934 (1982).

Order directing the submission of a urine sample for analysis is appropriate and within the equity powers of the court and within the powers provided in this section and Super. Ct. Crim. R. 42. Noncompliance with that order, while constituting criminal contempt, is also subject to a civil contempt citation compelling compliance. In *re Scott*, App. D.C., 517 A.2d 310 (1986).

Sentencing for criminal contempt. — There is no limitation on the length of the sentence for criminal contempt. *Caldwell v. United States*, App. D.C., 595 A.2d 961 (1991).

Proportionality principle used in sentencing. — The principle of proportionality is the guide in determining whether or not a sentence for contempt bears a reasonable relationship to the underlying conduct. *Caldwell v. United States*, App. D.C., 595 A.2d 961 (1991).

Where the usual sentences imposed for violation of a stay-away order were far less severe than the sentence for the contempt, this not only exceeded in substantial measure sentences in other stay-away contempts, but also the sentences that appellant received for assault with an automobile, the act underlying the finding of contempt, and assault with a stick. Where the judge gave no indication that such a sentence was required to vindicate the authority of the court, much less what made the case unlike other cases in which stay-away orders had been violated, case was remanded for resentencing according to the proportionality principle. *Caldwell v. United States*, App. D.C., 595 A.2d 961 (1991).

Vindication of court's authority. — In sentencing appellant for contempt, the only question before the judge was what sentence was necessary to vindicate the authority of the court. *Caldwell v. United States*, App. D.C., 595 A.2d 961 (1991).

Violations of pretrial release orders. — The legislative history of § 23-1329 does not reveal an intent by Congress to override the unlimited sentencing provision of this section in cases involving violations of conditions of pretrial release under § 23-1321. *Caldwell v. United States*, App. D.C., 595 A.2d 961 (1991).

This section operates independently of and in

addition to § 23-1329(c), so that the sentencing limit of 6-months' imprisonment and \$1,000 does not apply to convictions for violations of a pretrial release order constituting contempt under this section. *Caldwell v. United States*, App. D.C., 595 A.2d 961 (1991).

When 2 statutes allow different penalties for the same act, the prosecutor has discretion in selecting which of the 2 statutes to apply, so long as the selection does not discriminate against any class of defendants. *Caldwell v. United States*, App. D.C., 595 A.2d 961 (1991).

Violation of lineup order. — Defendant's guilt of criminal contempt for violating a lineup order was established beyond a reasonable doubt, where the lineup order had specified that defendant was not to change his facial or bodily appearance prior to the lineup, but defendant later appeared at the lineup with a shaven head. *In re Carter*, App. D.C., 373 A.2d 907 (1977).

Where defendant, who had been given lineup order directing that he not alter his facial appearance prior to lineup, had his head and face shaved before a preliminary hearing, he made no showing of exigent circumstances warranting his failure to obtain the court's permission and the determination that he possessed the intent required to support contempt conviction was justified. *In re Jackson*, App. D.C., 328 A.2d 377 (1974).

Failure to appear for trial. — Contempt of court is a proper method of punishing a defendant who fails to appear for trial. *Campbell v. United States*, App. D.C., 295 A.2d 498 (1972).

Failure to obey subpoena. — Witness's failure to appear, despite notification by subpoena, is a criminal contempt of court. *In re Ragland*, App. D.C., 343 A.2d 558 (1975).

Court may hold debtor in civil contempt to force compliance with child support order. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Considerations in determining civil contempt for failure to make support payments. — In making the determination of civil contempt for failure to make support payments, the trial court considers all the circumstances of the case, including whether the defendant's asserted inability to pay is due to involuntary financial straits or a voluntary decision to reduce his or her income. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Unauthorized practice of law constitutes contempt of court and the court has inherent power to punish such conduct and prevent its recurrence. *J.H. Marshall & Assocs. v. Burleson*, App. D.C., 313 A.2d 587 (1973).

Double jeopardy principles are implicated by criminal contempt convictions resulting from nonsummary proceedings and such a conviction bars a subsequent criminal prosecution if both cases involve the same

offense. *United States v. Dixon*, 117 WLR 9 (Super. Ct. 1989).

One who has been convicted of criminal contempt for violating a court order that he not commit any criminal offense while on pretrial release may not be subsequently prosecuted for commission of the substantive offense which formed the basis of the contempt conviction. *United States v. Dixon*, 117 WLR 9 (Super. Ct. 1989).

Burden of showing justification for non-compliance with court order. — Where a civil contempt order was for failure to do specific acts ordered by the court, once noncompliance with the decree is established, the burden of establishing justification for noncompliance shifts to the alleged contemnor. *Bolden v. Bolden*, App. D.C., 376 A.2d 430 (1977).

Petty contempt tried without jury. — A petty contempt, that is, one for which the penalty imposed either does not exceed 6 months, or a longer penalty has not been expressly authorized by statute, may be tried without a jury. *In re Carter*, App. D.C., 373 A.2d 907 (1977).

Congress intended to afford a jury trial in contempt cases only when the penalty imposed exceeds 6 months imprisonment, thus criminal contemnors have no right to a jury trial when the only penalty imposed is a fine. *In re Evans*, App. D.C., 411 A.2d 984 (1980).

Fine in excess of \$300 merits jury trial. — Where defendant had been fined in excess of \$300 for a contempt of court, he was convicted of a serious offense and entitled to a jury trial, as guaranteed by the Sixth Amendment and by § 16-705(a). *In re Evans*, App. D.C., 411 A.2d 984 (1980), *aff'd*, App. D.C., 450 A.2d 443 (1982).

Or reduction of fine. — Where defendant had been fined in excess of \$300 for a contempt without the benefit of a jury trial, the deprivation of defendant's Sixth Amendment right to a jury trial was remedied by reducing his fine to \$300 (a fine not requiring a jury trial). *In re Evans*, App. D.C., 411 A.2d 984 (1980), *aff'd*, App. D.C., 450 A.2d 443 (1982).

Fine held not excessive. — A \$200 fine for contempt upon failure of counsel to return directly to trial court as ordered after being allowed to attend hearing in another court is not excessive. *In re Rosen*, App. D.C., 315 A.2d 151, cert. denied, 419 U.S. 964, 95 S. Ct. 224, 42 L. Ed. 2d 178 (1974).

Appeal of contempt citation premature absent imposition of sanction. — Absent imposition of sanction, whether it be fine, probation or term in jail, citation imposed for criminal contempt in and of itself is not a final order and raises no justiciable issue for appeal. *In re Cys*, App. D.C., 362 A.2d 726 (1976); *Beckwith v. Beckwith*, App. D.C., 379 A.2d 955

(1977), cert. denied, 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405 (1978).

Where no final order of the trial court has been entered fixing the total amount of fine to be paid for civil contempt, and no assets of the contemnor have been sequestered, the contempt adjudication is not for such reasons non-appealable, but it would be premature for the Court of Appeals to consider the extent of the contemnor's ultimate pecuniary liability for civil contempt. *Bolden v. Bolden*, App. D.C., 376 A.2d 430 (1977).

Court may stay imprisonment for contempt. — A court may order commitment for contempt but stay imprisonment on the condition of compliance with reasonable, specific requirements. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Required findings before revocation of stay. — When the trial court has before it a motion for relief providing evidence of the contemnor's inability to comply with the terms of the stay of imprisonment for contempt, it must find that the contemnor is able to meet the terms of the stay before it may revoke the stay. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Evidence sufficient to establish contemptuous conduct. — See *In re Nesbitt*, App. D.C., 345 A.2d 154 (1975); *In re Gregory*, App. D.C., 387 A.2d 720 (1978).

Conviction not supported by the evidence. — Where there is sufficient evidentiary support for only one of the grounds of contempt relied upon, and where the summary contempt adjudication was based upon a finding on three of the grounds considered, a contempt conviction could not stand. *In re L.G.*, App. D.C., 639 A.2d 603 (1994).

Evidence insufficient to support conviction for criminal contempt. *Warrick v. United States*, App. D.C., 528 A.2d 438 (1987); *In re Kraut*, App. D.C., 580 A.2d 1305 (1990).

Cited in *In re DeNeuveville*, App. D.C., 286 A.2d 225 (1972); *In re Bell*, App. D.C., 373 A.2d 232 (1977); *Luchsinger v. Luchsinger*, App. D.C., 377 A.2d 1146 (1977); *Kaplan v. Hess*, 694 F.2d 847 (D.C. Cir. 1982); *In re Neal*, App. D.C., 475 A.2d 390 (1984); *In re Tinney*, App. D.C., 518 A.2d 1009 (1986); *Williams v. United States*, App. D.C., 551 A.2d 1353 (1989); *Morgan v. Foretich*, App. D.C., 564 A.2d 1, cert. denied, 488 U.S. 1007, 109 S. Ct. 790, 102 L. Ed. 2d 781 (1989); *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989); *Garland v. Cobb*, 117 WLR 1365 (Super. Ct. 1989); *Beckham v. United States*, App. D.C., 609 A.2d 1122 (1992); *Skyers v. United States*, App. D.C., 619 A.2d 931 (1993).

§ 11-945. Oaths, affirmations, and acknowledgments.

Each judge and each employee of the Superior Court authorized by the chief judge may administer oaths and affirmations and take acknowledgments. (July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-945.)

§ 11-946. Rules of court.

The Superior Court shall conduct its business according to the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure (except as otherwise provided in title 23) unless it prescribes or adopts rules which modify those Rules. Rules which modify the Federal Rules shall be submitted for the approval of the District of Columbia Court of Appeals, and they shall not take effect until approved by that court. The Superior Court may adopt and enforce other rules as it may deem necessary without the approval of the District of Columbia Court of Appeals if such rules do not modify the Federal Rules. The Superior Court may appoint a committee of lawyers to advise it in the performance of its duties under this section. (July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-946.)

Cross references. — As to rules of District of Columbia Court of Appeals, see § 11-743.

As to subpoenas, see § 11-942.

As to process, see § 11-943.

As to rules and regulations of Tax Division, see § 11-1203.

As to rules concerning admission to bar, see § 11-2501.

As to rules of procedure concerning attachment and garnishment of wages, see § 16-581.

As to rules and regulations of Criminal Division, see § 16-701.

As to applicability of rules of Superior Court to Small Claims and Conciliation Branch, see § 16-3901.

As to rules concerning professional bondsmen, see § 23-1108.

Section references. — This section is referred to in § 16-701.

Legislative history of this section reflects congressional intent that the local courts were to be governed by the federal rules, and not by local rules or custom. *Varela v. Hi-Lo Powered Stirrups, Inc.*, App. D.C., 424 A.2d 61 (1980).

Authority of Court of Appeals. — This section makes clear that the Court of Appeals possesses the ultimate authority to approve or reject proposed Superior Court rules that modify existing federal rules of procedure. *Johnson v. United States*, App. D.C., 647 A.2d 1124 (1994).

“Approval” by the Court of Appeals of any Superior Court rule means only that the appeals court must give its sanction to any rule which modifies the federal rules of civil or criminal procedure. Where an amendment does not modify the federal rule but, on the contrary, makes the Superior Court rule identical to it, the appeals court can neither “approve” nor “disapprove” the amendment; the most it can do is to stay its effectiveness until the Superior Court can decide whether it wishes to accept the amendment or to modify it. *Flemming v. United States*, App. D.C., 546 A.2d 1001 (1988).

Limitation on authority to adopt rules. — This section does not grant the Superior Court or the Court of Appeals the power to overturn any District of Columbia statute by adopting a court rule. *Flemming v. United States*, App. D.C., 546 A.2d 1001 (1988).

Under this section, the Superior Court is not precluded from adopting rules which “change prior case law” but rather from adopting rules which “enlarge, modify, or abridge substantive rights.” *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989).

Rules have force and effect of law. — Superior Court Rules, at least when they are substantially identical to the Federal Rules, have the force and effect of law. *Campbell v. United States*, App. D.C., 295 A.2d 498 (1972).

Methods of interpreting rules. — A court may utilize the same methods of statutory construction in interpreting the meaning of a statute, or act, passed by the Congress, or the District Council, respectively; i.e., it should look to the plain meaning of the words, to the legislative history, and to the interpretations that have been placed on the rule by other courts. *Varela v. Hi-Lo Powered Stirrups, Inc.*, App. D.C., 424 A.2d 61 (1980).

And are construed in light of Federal Rules. — Superior Court Rules must be construed in light of the meaning of the corre-

sponding Federal Rules. *Campbell v. United States*, App. D.C., 295 A.2d 498 (1972).

While an appellate court is not bound in its interpretation of the Superior Court Rules by the federal courts’ interpretation of the Federal Rules, it may find the decisions to be analogous authority for interpretation of the essentially identical provisions. *Varela v. Hi-Lo Powered Stirrups, Inc.*, App. D.C., 424 A.2d 61 (1980).

Rules inconsistent with Code provisions. — This section requires the Superior Court to follow federal rules of procedure, but does not impose on the Superior Court the federal policy, codified in former 18 U.S.C. § 3771 (repealed by Pub. L. 100-702, 102 Stat. 4651, effective December 1, 1988), that rules supersede inconsistent statutes. *Flemming v. United States*, App. D.C., 546 A.2d 1001 (1988).

A federal rule which, by Act of Congress, becomes a Superior Court rule may not supersede an inconsistent provision of the District of Columbia Code. Once it becomes a Superior Court rule, it must behave like a Superior Court rule; that is, under § 16-701, it must be consistent with any statute applicable to the court’s business. *Flemming v. United States*, App. D.C., 546 A.2d 1001 (1988).

Stay of effectiveness of federal rules amendments. — Congress’ grant of authority to the Court of Appeals to reject outright the application of federal rule changes to the Superior Court must sensibly include the lesser power to stay the effectiveness of those rules to give the deliberative processes of both the trial and appellate courts time to work. *Johnson v. United States*, App. D.C., 647 A.2d 1124 (1994).

Authority of judges and commissioners. — It is for the Court of Appeals, and not for individual judges or commissioners to determine the validity of rules properly adopted by the Board of Judges of the Superior Court. *District of Columbia ex rel. K.K. v. W.C.R.*, 117 WLR 1373 (Super. Ct. 1989).

Court has no power to abridge or modify substantive right. — Congress did not intend to grant to the Superior Court the power to adopt rules abridging, enlarging or modifying any substantive right. In re C.A.P., App. D.C., 356 A.2d 335, rehearing denied, App. D.C., 359 A.2d 11 (1976).

The Superior Court exceeded its statutory grant of rule-making power by enacting a procedural rule which abridged a substantive right. In re C.A.P., App. D.C., 356 A.2d 335, rehearing denied, App. D.C., 359 A.2d 11 (1976).

Rules governing practice of law. — A court has an inherent right to make rules governing the practice of law before it and to promulgate rules concerning who may practice law. *J.H. Marshall & Assocs. v. Burleson*, App. D.C., 313 A.2d 587 (1973).

A court has the inherent power to regulate

and control the practice of law and to protect the public and the administration of justice by forbidding the unwarranted intrusion of unauthorized and unskilled persons into the practice of law. *J.H. Marshall & Assocs. v. Burleson*, App. D.C., 313 A.2d 587 (1973).

Adoption of child support guidelines. — Section 11-1732(j)(4)(A) constitutes a specific delegation of authority to the Superior Court to adopt a rule setting forth child support guidelines; as such, it would prevail over the general jurisdictional provision of this section. *District of Columbia ex rel. K.K. v. W.C.R.*, 117 WLR 1373 (Super. Ct. 1989).

Child Support Guideline. — Child Support Guideline adopted by Superior Court Board of Judges changed substantive law and was invalid. *Fitzgerald v. Fitzgerald*, App. D.C., 566 A.2d 719 (1989).

Congress did not grant the Superior Court authority to change substantive law regarding child support awards. *Fitzgerald v. Fitzgerald*, App. D.C., 566 A.2d 719 (1989).

The Child Support Guideline Committee, and the Board of Judges, cannot expand its authority on the basis of legislation which is silent regarding the authority to overrule existing case law. *Fitzgerald v. Fitzgerald*, App. D.C., 566 A.2d 719 (1989).

The Superior Court Board of Judges had the authority to adopt the Child Support Guideline

as a rebuttable presumption in the form of a rule of court so long as judges and hearing commissioners continue to exercise their discretion to achieve equitable results consistent with existing case law. *Fitzgerald v. Fitzgerald*, App. D.C., 566 A.2d 719 (1989).

Cited in *Shellie v. United States*, App. D.C., 277 A.2d 288 (1971); *Spock v. District of Columbia*, App. D.C., 283 A.2d 14 (1971); *United States v. Burka*, App. D.C., 289 A.2d 376 (1972); *Smith v. Smith*, App. D.C., 310 A.2d 229 (1973); *Rieser v. District of Columbia*, 580 F.2d 647 (D.C. Cir. 1978); *Sullivan v. United States*, App. D.C., 404 A.2d 153 (1979); *Taylor v. Washington Hosp. Ctr.*, App. D.C., 407 A.2d 585 (1979), cert. denied, 446 U.S. 921, 100 S. Ct. 1857, 64 L. Ed. 2d 275 (1980); *Hooks v. Washington Sheraton Corp.*, 642 F.2d 614 (D.C. Cir. 1980); *Curry v. Sutherland*, 111 WLR 1613 (Super. Ct. 1983); *Peckarsky v. ABC*, 603 F. Supp. 688 (D.D.C. 1984); *Johnson v. United States*, App. D.C., 544 A.2d 270 (1988); *District of Columbia ex rel. K.K. v. W.C.R.*, 116 WLR 2197 (Super. Ct. 1988); *Powers v. United States*, App. D.C., 588 A.2d 1166 (1991); *A.S. v. District of Columbia ex rel. B.R.*, App. D.C., 593 A.2d 646 (1991); *Burns v. Greater S.E. Community Hosp.*, 119 WLR 1869 (Super. Ct. 1991); *Easter Seal Soc'y for Disabled Children v. Berry*, App. D.C., 627 A.2d 482 (1993).

CHAPTER 11. FAMILY DIVISION OF THE SUPERIOR COURT.

Sec.

11-1101. Exclusive jurisdiction.

§ 11-1101. Exclusive jurisdiction.

The Family Division of the Superior Court shall be assigned, in accordance with chapter 9, exclusive jurisdiction of —

- (1) actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony, pendente lite and permanent, and for support and custody of minor children;
- (2) applications for revocation of divorce from bed and board;
- (3) actions to enforce support of any person as required by law;
- (4) actions seeking custody of minor children, including petitions for writs of habeas corpus;
- (5) actions to declare marriages void;
- (6) actions to declare marriages valid;
- (7) actions for annulments of marriage;
- (8) determinations and adjudications of property rights, both real and personal, in any action referred to in this section, irrespective of any jurisdictional limitation imposed on the Superior Court;
- (9) proceedings in adoption;
- (10) proceedings under the Act of July 10, 1957 (D.C. Code, secs. 30-301 to 30-324);
- (11) proceedings to determine paternity of any child born out of wedlock;
- (12) civil proceedings for protection involving intrafamily offenses, instituted pursuant to chapter 10 of title 16;
- (13) proceedings in which a child, as defined in section 16-2301, is alleged to be delinquent, neglected, or in need of supervision;
- (14) proceedings under chapter 5 of title 21 relating to the commitment of the mentally ill;
- (15) proceedings under chapter 11 of title 21 relating to the commitment of the substantially retarded; and
- (16) proceedings under Interstate Compact on Juveniles (described in title IV of the District of Columbia Court Reform and Criminal Procedure Act of 1970). (July 29, 1970, 84 Stat. 488, Pub. L. 91-358, title I, § 111; Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, § 2(a)(2), (3); 1973 Ed., § 11-1101.)

Cross references. — As to time of bringing complaint in parentage proceeding, see § 16-2342.

As to tests to establish parentage, see § 16-2343.

As to uniform child custody jurisdiction and marital or parent and child long-arm jurisdiction, see Chapter 45 of Title 16.

As to the age of majority, see note following § 21-101.

As to jurisdiction over compulsory school

attendance and work permit cases, see § 31-413.

Section references. — This section is referred to in §§ 11-1732, 16-916.1, 16-924, 16-2305, 16-2331, 16-2341, 16-2342, 16-2343, 16-2344, 16-2348, and 30-506.

References in text. — The Interstate Compact on Juveniles, referred to in paragraph (16) of this section, is codified in § 32-1102.

Section contemplates jurisdiction over acts outside District. — This section not only

lacks language suggesting a geographical limitation on jurisdiction, but on the contrary includes language contemplating the coverage of some acts outside the District of Columbia. In *re A.S.W.*, App. D.C., 391 A.2d 1385 (1978).

Such jurisdiction proper. — Residents of the District of Columbia juvenile detention facility located in Maryland who were charged with assaulting counselors there were subject to the jurisdiction of the Family Division and did not have a constitutional right to a proceeding in Maryland. In *re A.S.W.*, App. D.C., 391 A.2d 1385 (1978).

Jurisdictional time limitations of § 16-2342 apply. — Section 16-2342, which imposes jurisdictional time limitations, is applicable by its terms to parentage and support proceedings brought under this section. *Felder v. Allsopp*, App. D.C., 391 A.2d 243 (1978).

Claims filed under paragraphs (3) and (11) of this section were the only ones subject to the 2-year limitation formerly set forth in § 16-2342. *Harris v. Kinard*, App. D.C., 443 A.2d 25 (1982).

Jurisdiction over prior offenses. — The Family Division has jurisdiction over intra-family offenses which occurred before the Court Reform Act of 1970 became effective. *United States v. Harrison*, 461 F.2d 1209 (D.C. Cir. 1972).

Extent of jurisdiction over property rights in divorce action. — The Family Division can adjudicate the respective rights of the parties to divorce action in any or all property to which one or the other makes claim. *Lyons v. Lyons*, App. D.C., 295 A.2d 903 (1972).

Although a divorce decree is ineffective to accomplish transfer of title by its own force, as to properties located outside the District of Columbia, it is effective as a determination of the property rights as between the parties. *Quarles v. Quarles*, App. D.C., 353 A.2d 285, cert. denied, 429 U.S. 922, 97 S. Ct. 321, 50 L. Ed. 2d 290 (1976).

Family Division has exclusive jurisdiction over wife's suit against her former husband to enforce a property settlement agreement by subjecting real property situated within the District of Columbia and held by parties as tenants in entirety to claims by the wife against the nonresident husband arising out of the property settlement agreement. *Travis v. Benson*, App. D.C., 360 A.2d 506 (1976).

The Family Division of the Superior Court enjoys broad discretion in distributing marital property. *Leftwich v. Leftwich*, App. D.C., 442 A.2d 139 (1982).

Interest required to justify property award. — In order to justify an award of property held solely in the name of one spouse it is necessary that the other spouse make showing of legal or equitable interest therein. *Lyons v. Lyons*, App. D.C., 295 A.2d 903 (1972).

Wife's contribution to household expenses does not in itself provide adequate basis for awarding her a share in her husband's property. *Lyons v. Lyons*, App. D.C., 295 A.2d 903 (1972).

Enforcement of support under foreign divorce decree. — Exclusive jurisdiction extends to the enforcement of support obligations under foreign divorce decrees. *Brown v. Dyer*, App. D.C., 489 A.2d 1081 (1985).

Section does not give authority to award jointly held property in custody or support cases where the parties are not divorced and do not consent to division of the property. *Maynard v. Maynard*, App. D.C., 360 A.2d 45 (1976).

Order by Family Division compelling spouse to cooperate in filing joint return would nullify the right of election conferred upon married taxpayers by the Internal Revenue Code. *Leftwich v. Leftwich*, App. D.C., 442 A.2d 139 (1982).

Right to visitation is distinct from the duty to support, which is the underlying purpose for parentage proceedings and which arises automatically upon the establishment of parentage by sufficient proof. *Felder v. Allsopp*, App. D.C., 391 A.2d 243 (1978).

Jurisdiction over visitation arises from general equitable powers. — Jurisdiction over an action for visitation rights stems from the general equitable powers of the Superior Court rather than from this section relating to the jurisdiction of the Family Division. *Felder v. Allsopp*, App. D.C., 391 A.2d 243 (1978).

Adjudication of paternity. — A claim seeking an adjudication of paternity, without any indication of the immediacy or reason such a declaration is required, does not present a justiciable claim. In *re D.M.*, App. D.C., 562 A.2d 618 (1989).

Where neither custody, divorce nor child support is sought, the jurisdictional basis of a paternity action is the general equity jurisdiction of the Superior Court. In *re D.M.*, App. D.C., 562 A.2d 618 (1989).

Putative father deceased. — No division of the Superior Court has jurisdiction to declare paternity once the putative father is deceased because that right abated at his death. In *re Estate of Glover*, 110 WLR 2809 (Super. Ct. 1982).

No division of the Superior Court may declare that a deceased insured was the father of a child born out of wedlock; however, the Court can certify a complaint which states a cognizable civil cause of action for trial on the issue of whether a support obligation arose during the life of the insured, so as to entitle the illegitimate child, if acknowledged by him, to insurance proceeds. *Carrington v. Metropolitan Life Ins. Co.*, 111 WLR 53 (Super. Ct. 1983).

Seventh Amendment right to trial by jury does not attach in proceeding to establish parentage. *Branch v. Fields*, App. D.C., 496 A.2d 607 (1985).

Juvenile charged as adult. — Jurisdiction will automatically vest in the Criminal Division where the United States Attorney elects to charge a juvenile as an adult under § 16-2307. *Brown v. United States*, App. D.C., 343 A.2d 48 (1975).

Retransfer when acquitted of adult charge. — Where defendant was tried as an adult on murder charges when he was 16 years old, acquitted of murder but convicted of manslaughter, a retrial for manslaughter in the district court was proper and retransfer to juvenile court not required. *Lucas v. United States*, App. D.C., 522 A.2d 876 (1987).

Age of majority established. — For the purposes of § 16-2301(3), a person legally becomes 18 years old on the day of his birthday and not on the day before. *United States v. Tucker*, App. D.C., 407 A.2d 1067 (1979).

Writ of ne exeat, which may be issued by courts of the District of Columbia in support of their jurisdiction over various marital actions,

is in the nature of civil bail, the purpose of which is to prevent the frustration of a plaintiff's equitable claims by insuring the continued physical presence of the defendant within the court's jurisdiction. *Gredone v. Gredone*, App. D.C., 361 A.2d 176 (1976).

Cited in *M.A.P. v. Ryan*, App. D.C., 285 A.2d 310 (1971); *Andrade v. Jackson*, App. D.C., 401 A.2d 990 (1979); *Hemily v. Hemily*, App. D.C., 403 A.2d 1139 (1979); *Jackson v. United States*, App. D.C., 441 A.2d 1000 (1982); *Butler v. Butler*, App. D.C., 496 A.2d 621 (1985); *Morgan v. Foretich*, App. D.C., 521 A.2d 248 (1987); *S.A. v. M.A.*, App. D.C., 531 A.2d 1246 (1987); *Rogers v. United States*, App. D.C., 566 A.2d 69 (1989); *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989); *Garland v. Cobb*, 117 WLR 1365 (Super. Ct. 1989); *In re J.E.C.*, 117 WLR 2485 (Super. Ct. 1989); *Clay v. Faison*, App. D.C., 583 A.2d 1388 (1990); *D.C. v. P.L.*, 118 WLR 1729 (Super. Ct. 1990); *In re A.H.*, App. D.C., 590 A.2d 123 (1991); *District of Columbia ex rel. J.A.B. v. W.R.*, 119 WLR 2261 (Super. Ct. 1991); *Johnson v. Cuccias*, 120 WLR 737 (Super. Ct. 1992); *Gore v. Gore*, App. D.C., 638 A.2d 672 (1994); *E.S. v. L.S.*, 122 WLR 561 (Super. Ct. 1994).

CHAPTER 12. TAX DIVISION OF THE SUPERIOR COURT.

Sec.

11-1201. Exclusive jurisdiction.

11-1202. Abolition of other remedies.

11-1203. Rules and regulations.

§ 11-1201. Exclusive jurisdiction.

The Tax Division of the Superior Court shall be assigned exclusive jurisdiction of —

(1) all appeals from and petitions for review of assessments of tax (and civil penalties thereon) made by the District of Columbia; and

(2) all proceedings brought by the District of Columbia for this imposition of criminal penalties pursuant to the provisions of the statutes relating to taxes levied by or in behalf of the District of Columbia. (July 29, 1970, 84 Stat. 488, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1201.)

Exclusive remedy in Tax Division. — The exclusive remedy of the petitioner, which was denied an exemption as an institution and assessed taxes due by the Property Assessment Division of the Department of Finance and Revenue, lies in the Tax Division of the Superior Court. *Washington Theater Club, Inc. v. District of Columbia Dep't of Fin. & Revenue*, App. D.C., 302 A.2d 231, cert. denied, 414 U.S. 831, 94 S. Ct. 63, 38 L. Ed. 2d 66 (1973).

Cited in *Carrington v. Metropolitan Life Ins. Co.*, 111 WLR 53 (Super. Ct. 1983); *Ward v.*

District of Columbia, 111 WLR 373 (Super. Ct. 1983); *McLean Gardens Corp. v. District of Columbia*, 111 WLR 785 (Super. Ct. 1983); *Washington Sheraton v. District of Columbia*, 111 WLR 1053 (Super. Ct. 1983); 1111 19th St. Assocs. v. District of Columbia, 112 WLR 1317 (Super. Ct. 1984); *Washington Magazine, Inc. v. District of Columbia*, 115 WLR 2085 (Super. Ct. 1987); *Hessey v. Burden*, App. D.C., 584 A.2d 1 (1990).

§ 11-1202. Abolition of other remedies.

Notwithstanding any other provision of law, the jurisdiction of the Tax Division of the Superior Court to review the validity and amount of all assessments of tax made by the District of Columbia is exclusive. Effective on and after the effective date of the District of Columbia Court Reorganization Act of 1970, any common-law remedy with respect to assessments of tax in the District of Columbia and any equitable action to enjoin such assessments available in a court other than the former District of Columbia Tax Court is abolished. Actions properly filed before the effective date of that Act are not affected by this section and the court in which any such action has been filed may retain jurisdiction until its disposition. (July 29, 1970, 84 Stat. 489, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1202.)

References in text. — The “effective date of the District of Columbia Court Reorganization Act of 1970,” referred to throughout this section, means, as set forth in § 199(c) of the Act, the first day of the seventh calendar month which began after the enactment of the Act.

Exclusive remedy in Tax Division. — The exclusive remedy of the petitioner, which was denied exemption as an institution and as-

essed taxes due by the Property Assessment Division of the District of Columbia Department of Finance and Revenue, lies in the Tax Division of the Superior Court. *Washington Theater Club, Inc. v. District of Columbia Dep't of Fin. & Revenue*, App. D.C., 302 A.2d 231, cert. denied, 414 U.S. 831, 94 S. Ct. 63, 38 L. Ed. 2d 66 (1973).

Cited in *Block v. District of Columbia*, 492

F.2d 646 (D.C. Cir. 1974); *United States v. [redacted]* 1981); *Hessey v. Burden*, App. D.C., 584 A.2d 1 District of Columbia, 669 F.2d 738 (D.C. Cir. (1990).

§ 11-1203. Rules and regulations.

The Superior Court may make such rules and regulations for conducting business in the Tax Division, consistent with the statutes applicable to such business and with the Superior Court's general rules of practice and procedure, as it may deem necessary and proper. Rules and regulations for the Tax Division shall, insofar as possible, assure the prompt disposition of matters before the Tax Division to the end that the taxing statutes of the District of Columbia shall be fairly and efficiently enforced. (July 29, 1970, 84 Stat. 489, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1203.)

Cross references. — As to rules of Superior Court, see § 11-946.

CHAPTER 13. SMALL CLAIMS AND CONCILIATION BRANCH OF THE SUPERIOR COURT.

Subchapter I. Continuation and Sessions.

Sec.

11-1301. Continuation of Branch.

11-1302. Sessions.

Sec.

11-1322. Arbitration and conciliation.

11-1323. Certification of cases by Superior Court judges; recertification; certification by Branch.

Subchapter II. Jurisdiction and Procedures.

11-1321. Exclusive jurisdiction of small claims.

Subchapter I. Continuation and Sessions.

§ 11-1301. Continuation of Branch.

The Small Claims and Conciliation Branch shall continue as a branch of the Civil Division in the Superior Court. (July 29, 1970, 84 Stat. 489, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1301.)

Cited in *Carrington v. Metropolitan Life Ins. Co.*, 111 WLR 53 (Super. Ct. 1983); *Canada v. Management Partnership, Inc.*, App. D.C., 618 A.2d 715 (1993).

§ 11-1302. Sessions.

The Small Claims and Conciliation Branch, with a judge in attendance, shall be open for the transaction of business on every day of the year except Saturday afternoons, Sundays, and legal holidays, and shall hold at least one evening session during each week. (July 29, 1970, 84 Stat. 489, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1302.)

Subchapter II. Jurisdiction and Procedures.

§ 11-1321. Exclusive jurisdiction of small claims.

The Small Claims and Conciliation Branch has exclusive jurisdiction of any action within the jurisdiction of the Superior Court which is only for the recovery of money, if the amount in controversy does not exceed \$5,000, exclusive of interest, attorney fees, protest fees, and costs. An action which affects an interest in real property may not be brought in the Branch. If a counterclaim, cross claim, or any other claim or any defense, affecting an interest in real property, is made in an action brought in the Branch, the action shall be certified to the Civil Division. (July 29, 1970, 84 Stat. 489, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1321; Oct. 30, 1984, 98 Stat. 3142, Pub. L. 98-598, § 4; Aug. 23, 1994, 108 Stat. 1564, Pub. L. 103-303, § 2(a).)

Cross references. — As to rules of court applicable in Small Claims and Conciliation Branch, see § 16-3901.

Section references. — This section is referred to in §§ 11-1323 and 16-3904.

Effect of amendments. — Pub. L. 103-303

substituted “\$5,000” for “\$2,000” in the first sentence.

Applicability of § 2(a) of Pub. L. 103-303. — Section 2(b) of Pub. L. 103-303 provided that the amendment made by § 2(a) of the act shall apply to cases filed with the Superior Court of

the District of Columbia on or after the date of the enactment of this Act. Public Law 103-303 was approved August 23, 1994.

Small Claims and Conciliation Branch does not have jurisdiction to entertain cross-claim in excess of \$2,000. McCray v. McGee, App. D.C., 504 A.2d 1128 (1986).

But \$2,000 jurisdictional limitation does not apply to set-offs and counterclaims under this section and § 16-3904. McCray v. McGee, App. D.C., 504 A.2d 1128 (1986).

Counterclaim for unpaid rent. — Where a party counterclaims for unpaid rent, and the

counterclaim requests only the recovery of money and does not affect possession of the premises, the Small Claims Branch has exclusive jurisdiction over the counterclaim. Bogans v. Jeffers, App. D.C., 430 A.2d 518 (1981).

Cited in Weinstein v. Calabrese, App. D.C., 439 A.2d 1091 (1981); Sere v. Group Hospitalization, Inc., App. D.C., 443 A.2d 33, cert. denied, 459 U.S. 912, 103 S. Ct. 221, 74 L. Ed. 2d 176 (1982); Leiken v. Wilson, App. D.C., 445 A.2d 993 (1982); Curry v. Sutherland, 111 WLR 1613 (Super. Ct. 1983); Aetna Cas. & Sur. Co. v. Carter, App. D.C., 549 A.2d 1117 (1988).

§ 11-1322. Arbitration and conciliation.

In order to effect the speedy settlement of controversies, and with the consent of the parties thereto, the Small Claims and Conciliation Branch may settle cases, irrespective of the amount involved, by the methods of arbitration and conciliation. A judge sitting in the Branch may act as a referee or arbitrator, either alone or in conjunction with other persons, as provided by rule of the court. A judge, officer, or employee of the Superior Court may not accept any fee or compensation in addition to that person's salary for services performed pursuant to this section. (July 29, 1970, 84 Stat. 490, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1322; June 13, 1994, Pub. L. 103-266, § 1(b)(17), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended the third sentence to remove gender-specific references.

Conciliation efforts in Small Claims

Branch are mandatory, and settlements are strongly favored. Leiken v. Wilson, App. D.C., 445 A.2d 993 (1982).

§ 11-1323. Certification of cases by Superior Court judges; recertification; certification by Branch.

(a) When the interests of justice seem to require and all parties consent thereto, a judge of the Superior Court may certify a case to the Small Claims and Conciliation Branch for conciliation or to obtain a complete or partial agreed statement of facts or stipulation, which will simplify and expedite the ultimate trial of the case. With the consent of all parties, the trial of the case may be completed in the Branch. In the absence of consent, the case shall be recertified to another judge of the Civil Division for trial.

(b) When the interests of justice seem to require, the Branch may certify to the Civil Division any action brought in the Branch under section 11-1321. (July 29, 1970, 84 Stat. 490, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1323.)

Cited in McCray v. McGee, App. D.C., 504 A.2d 1128 (1986).

CHAPTER 15. JUDGES OF THE DISTRICT OF COLUMBIA COURTS.

Subchapter I. Appointment; Qualifications; Service of Judges.

Sec.

- 11-1501. Appointment and qualifications of judges.
- 11-1502. Tenure.
- 11-1503. Designation of Chief Judge.
- 11-1504. Services of retired judges.
- 11-1505. Vacations.

Subchapter II. The District of Columbia Commission on Judicial Disabilities and Tenure

- 11-1521. Establishment of Commission.
- 11-1522. Membership.
- 11-1523. Terms of office; vacancy; continuation of service by a member.
- 11-1524. Compensation.
- 11-1525. Operations; personnel; administrative services.
- 11-1526. Removal; involuntary retirement; proceedings.
- 11-1527. Procedures.
- 11-1528. Privilege; confidentiality.
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Sec.

11-1530. Financial statements. Subchapter III. Retirement.

- 11-1561. Definitions.
- 11-1562. Eligibility for retirement.
- 11-1563. Withholding of retirement payments; lump-sum credit.
- 11-1564. Computation of retirement salary; election to credit other service.
- 11-1565. Service by retired judges.
- 11-1566. Survivor annuity; election; relinquishment.
- 11-1567. Survivor annuity; payments to fund.
- 11-1568. Survivor annuity; entitlement; computation.
- 11-1568.1. Opportunity to revoke a previous survivor annuity election.
- 11-1568.2. Additional opportunity to make a survivor annuity election.
- 11-1568.3. Period for exercise of right to revoke or elect.
- 11-1569. Survivor annuity; payment; order of precedence.
- 11-1570. Retirement and annuity fund.
- 11-1571. Periodic increases; existing rights.

Subchapter I. Appointment; Qualifications; Service of Judges.

§ 11-1501. Appointment and qualifications of judges.

(a) The President of the United States shall nominate, and by and with the advice and consent of the Senate, shall appoint all judges of the District of Columbia courts. The President shall have power to fill all vacancies that may occur in those courts during a recess of the Senate, by granting commissions which shall expire at the end of the next session of the Senate.

(b) A person may not be appointed a judge of a District of Columbia court unless that person —

(1) is a citizen of the United States;

(2)(A) is a member of the bar of the District of Columbia and (B) (i) has been a member of such bar for a period of at least five years, or (ii) in the case of a professor of law in a law school in the District of Columbia or of an attorney employed in the District of Columbia by the United States or the District of Columbia, has been eligible for membership in the bar of the District of Columbia for at least five years prior to appointment;

(3) has been actively engaged, for at least five of the ten years immediately prior to appointment, as an attorney in the practice of law in the District of Columbia, as a judge of a District of Columbia court, as a professor of law in a law school in the District of Columbia, or as an attorney employed in the District of Columbia by the United States or the District of Columbia; and

(4) is a bona fide resident of the area consisting of the District of Columbia, Montgomery and Prince George's Counties in Maryland, Arlington

and Fairfax Counties (and any cities within the outer boundaries thereof) and the city of Alexandria in Virginia and has maintained an actual place of abode in such area for at least five years prior to appointment.

During term of service and for one year after the termination thereof, no member of the District of Columbia Commission on Judicial Disabilities and Tenure shall be eligible for nomination or appointment to a District of Columbia court. (July 29, 1970, 84 Stat. 491, Pub. L. 91-358, title I, § 111; Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, § 2(a)(4); 1973 Ed., § 11-1501; June 13, 1994, Pub. L. 103-266, §§ 1(b)(18), (19), 108 Stat. 713.)

Cross references. — As to provisions of District Charter relating to nomination and appointment of judges, see § 433 of Appendix to this title.

As to provisions of District Charter relating to District of Columbia Judicial Nomination Commission, see § 434 of Appendix to this title.

Superseding of section. — The provisions of this section have been superseded by § 433 of the District Charter (See the Appendix to Title II).

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

Appointment of additional judges to Court of Appeals. — Section 195(a)(1) of Pub. L. 91-358 provided for the appointment of 3 additional judges to the District of Columbia Court of Appeals, by the President of the United States and with the advice and consent of the Senate, to serve a term of 15 years.

Appointment of additional judges to Court of General Sessions. — Section

195(a)(2) of Pub. L. 91-358 provided for the appointment of 10 additional judges to the District of Columbia Court of General Sessions, by the President of the United States and with the advice and consent of the Senate, to serve a term of 15 years.

Appointment of Executive Officer. — Section 195(b) of Pub. L. 91-358 provided for the appointment, and compensation, and removal of the Executive Officer of the District of Columbia courts.

Vacancies in certain District courts on July 29, 1970. — Section 195(c) of Pub. L. 91-358 provided for the qualifications and 15-year term of office of any judge appointed to fill any vacancy which existed on July 29, 1970, in the District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, or the Juvenile Court of the District of Columbia.

Termination of Federal Disclosure Requirements. — See Pub. L. 99-573, § 6.

§ 11-1502. Tenure.

Subject to mandatory retirement at age 74 and to the provisions of subchapters II and III of this chapter, a judge of a District of Columbia court appointed on or after the date of enactment of the District of Columbia Court Reorganization Act of 1970 shall serve for a term of fifteen years, and upon completion of such term, such judge shall continue to serve until the judge's successor is appointed and qualifies. (July 29, 1970, 84 Stat. 491, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1502; Mar. 19, 1984, 98 Stat. 65, Pub. L. 98-235; June 13, 1994, Pub. L. 103-266, § 1(b)(20), 108 Stat. 713.)

Cross references. — As to provisions of District Charter relating to tenure of judges, see § 431 of Appendix to this title.

Section references. — This section is referred to in § 11-1562.

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

References in text. — The date of enactment of the District of Columbia Court Reorga-

nization Act of 1970, referred to in this section, is July 29, 1970.

Cited in Corley v. United States, App. D.C., 416 A.2d 713, cert. denied, 449 U.S. 1036, 101 S. Ct. 614, 66 L. Ed. 2d 499 (1980); Holland v. B. & O.R.R., App. D.C., 431 A.2d 597 (1981); United States v. Rodriguez, 115 WLR 2729 (Super. Ct.); Hessey v. Burden, App. D.C., 584 A.2d 1 (1990).

§ 11-1503. Designation of Chief Judge.

(a) The chief judge of a District of Columbia court shall be designated by the President of the United States from among the judges of the court in regular active service, and shall serve for a term of four years or until a successor is designated. The chief judge shall be eligible for redesignation. The chief judge may relinquish that position, after giving notice to the President.

(b) If a chief judge is not redesignated, or relinquishes the office of chief judge, that person shall continue as an associate judge. (July 29, 1970, 84 Stat. 491, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1503; June 13, 1994, Pub. L. 103-266, §§ 1(b)(21), (22), 108 Stat. 713.)

Cross references. — As to provisions of District Charter relating to designation of chief judge of a District of Columbia court, see § 431 of Appendix to this title.

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

§ 11-1504. Services of retired judges.

(a)(1) A judge, retired for reasons other than disability, who has been favorably recommended and appointed as a senior judge, in accordance with subsection (b), may perform such judicial duties as such senior judge is assigned and willing and able to undertake. A senior judge shall be subject to reappointment every four years, unless the Senior Judge has reached his or her seventy-fourth birthday, whereupon review shall be at least every two years, in accordance with subsection (b). Except as provided under this section, retired judges may not perform judicial duties in District of Columbia courts.

(2) At any time prior to or not later than one year after retirement, a judge may request recommendation from the District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter in this section referred to as the "Commission") to be appointed as a senior judge in accordance with this section; except that any retired judge shall have not less than 180 days from the effective date of this Act to file a request for an initial recommendation from the Commission.

(b)(1) A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.

(2) The Commission shall submit a written report of its recommendations and findings to the appropriate chief judge and the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.

(3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final.

(c) A judge may continue to perform judicial duties upon retirement, without appointment as a senior judge, until such judge's successor assumes office.

(d) A retired judge, actively performing judicial duties as of the date of enactment of the District of Columbia Retired Judge Service Act, may continue to perform such judicial duties as he or she may be willing and able to assume, subject to the approval of the appropriate chief judge, for a period not to exceed one year from the date of enactment of such Act, without appointment as a senior judge. (July 29, 1970, 84 Stat. 491, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1504; Oct. 30, 1984, 98 Stat. 3142, Pub. L. 98-598, § 2(a); Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, §§ 14(a), (b).)

References in text. — “The effective date of this Act,” referred to in subsection (a)(2), is October 28, 1986.

The “District of Columbia Retired Judge Service Act,” referred to in subsection (d), is Public Law 98-598.

§ 11-1505. Vacations.

(a) Each judge of the District of Columbia courts shall be entitled to an annual vacation of not more than 30 calendar days. Such vacation shall be taken at such time or times as prescribed by the chief judge of the District of Columbia Court of Appeals for judges of that court and by the chief judge of the Superior Court for judges of that court. Time spent by a judge as a member of any conference, committee, or commission established by law shall not be deducted from the judge's vacation period.

(b) In determining when a judge shall take a vacation, and the length thereof, the chief judge exercising authority under this section shall be mindful of the necessity of retaining sufficient judicial personnel in the court under the chief judge's supervision to permit at all times the prompt and effective disposition of the business of such court. (July 29, 1970, 84 Stat. 492, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1505; June 13, 1994, Pub. L. 103-266, §§ 1(b)(23), (24), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

Subchapter II. The District of Columbia Commission on Judicial Disabilities and Tenure.

§ 11-1521. Establishment of Commission.

There shall be a District of Columbia Commission on Judicial Disabilities and Tenure (hereafter in this subchapter referred to as the “Commission”). The Commission shall have power to suspend, retire, or remove a judge of a District of Columbia court, as provided in this subchapter. (July 29, 1970, 84 Stat. 492, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1521.)

Cross references. — As to provisions of District Charter relating to establishment of Commission, and its power to remove, suspend, or retire judges, see §§ 431 and 432 of Appendix to this title.

As to continuation of Commission, see § 718 of Appendix to this title.

Constitutionality. — This section does not encroach on judicial independence in a manner in violation of the doctrine of separation of powers. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

§ 11-1522. Membership.

(a) The Commission shall consist of five members appointed as follows:

(1) The President of the United States shall appoint three members of the Commission. Of the members appointed by the President —

(A) at least one member must be a member of the District of Columbia bar who has been actively engaged in the practice of law in the District of Columbia for at least five of the ten years immediately before appointment; and

(B) at least two members must be residents of the District of Columbia.

(2) The Commissioner [Mayor] of the District of Columbia shall appoint one member of the Commission. The member appointed by the Commissioner [Mayor] must be a resident of the District of Columbia and not an attorney.

(3) The chief judge of the United States District Court for the District of Columbia shall appoint one member of the Commission. The member appointed by the chief judge shall be an active or retired Federal judge serving in the District of Columbia.

The President shall designate as Chair of the Commission one of the members appointed pursuant to paragraph (1) who is a member of the District of Columbia bar who has been actively engaged in the practice of law in the District of Columbia for at least five of the ten years before the member's appointment.

(b) There shall be three alternate members of the Commission, who shall serve as members pursuant to rules adopted by the Commission. The alternate members shall be appointed as follows:

(1) The President shall appoint one alternate member, who shall be a resident of the District of Columbia and a member of the bar of the District of Columbia who has been actively engaged in the practice of law in the District of Columbia for at least five of the ten years immediately before appointment.

(2) The Commissioner [Mayor] shall appoint one alternate member who shall be a resident of the District of Columbia and not an attorney.

(3) The chief judge of the United States District Court for the District of Columbia shall appoint one alternate member who shall be an active or retired Federal judge serving in the District of Columbia.

(c) No member or alternate member of the Commission shall be a member, officer, or employee of the legislative branch or of an executive or military department of the United States Government (listed in section 101 or 102 of title 5, United States Code); and no member or alternate member (other than a member or alternate member appointed by the chief judge of the United States District Court for the District of Columbia) shall be an officer or employee of the judicial branch of the United States Government. No member

or alternate member of the Commission shall be an officer or employee of the District of Columbia government (including its judicial branch). (July 29, 1970, 84 Stat. 492, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1522; June 13, 1994, Pub. L. 103-266, §§ 1(b)(25)-(27), 108 Stat. 713.)

Cross references. — As to provisions of District Charter relating to Commission membership, see § 431 of Appendix to this title.

Effect of amendments. — Public Law 103-266 amended (a) and (b) to remove gender-specific references.

Change in government. — This section originated at a time when local government powers were delegated at the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1523. Terms of office; vacancy; continuation of service by a member.

(a)(1) Except as provided in paragraph (2), the term of office of members and alternate members of the Commission shall be six years.

(2) Of the members and alternate members first appointed to the Commission —

(A) one member and alternate member appointed by the President shall be appointed for a term of six years, one member appointed by the President shall be appointed for a term of four years, and one such member shall be appointed for a term of two years, as designated by the President at the time of appointment;

(B) the member and alternate member appointed by the chief judge of the United States District Court for the District of Columbia shall be appointed for a term of four years; and

(C) the member and alternate member appointed by the Commissioner [Mayor] of the District of Columbia shall be appointed for a term of two years.

(b) A member or alternate member appointed to fill a vacancy occurring before the expiration of the term of that member's predecessor shall serve only for the remainder of that term. Any vacancy on the Commission shall be filled in the same manner as the original appointment was made.

(c) If approved by the Commission, a member may serve after the expiration of that member's term for purposes of participating until conclusion in a matter, relating to the suspension, retirement, or removal of a judge, begun before the expiration of that member's term. A member's successor may be appointed without regard to the member's continuation in service, but that member's successor may not participate in the matter for which the member's continuation in service was approved. (July 29, 1970, 84 Stat. 493, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1523; June 13, 1994, Pub. L. 103-266, §§ 1(b)(28), (29), 108 Stat. 713.)

Cross references. — As to provisions of District Charter relating to terms of office and vacancies on Commission, see § 431 of Appendix to this title.

Effect of amendments. — Public Law 103-266 amended (b) and (c) to remove gender-specific references.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1524. Compensation.

Any member or alternate member who is an active or retired Federal judge or an officer or employee of the United States shall serve without compensation. Other members or alternate members shall receive the daily equivalent of the rate provided for GS-18 of the General Schedule when actually engaged in service for the Commission. (July 29, 1970, 84 Stat. 493, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1524.)

Cross references. — As to provisions of District Charter relating to compensation, see § 431 of Appendix to this title.

References in text. — The General Schedule, referred to in the second sentence of this section, appears in 5 U.S.C. § 5332.

§ 11-1525. Operations; personnel; administrative services.

(a) The Commission may make such rules and regulations for its operations as it may deem necessary, and such rules and regulations shall be effective on the date specified by the Commission. The District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1510) shall be applicable to the Commission only as provided by this subsection. For the purposes of the publication of rules and regulations, judicial notice, and the filing and compilation of rules, sections 5, 7, and 8 of that Act (D.C. Code, secs. 1-1504 [1-1505], 1-1506, and 1-1507), insofar as consistent with this subchapter, shall be applicable to the Commission; and for purposes of those sections, the Commission shall be deemed an independent agency as defined in section 3(5) of that Act (D.C. Code, sec. 1-1502). Nothing contained herein shall be construed to require prior public notice and hearings on the subject of rules adopted by the Commission.

(b) The Commission is authorized, without regard to the provisions governing appointment and classification of District of Columbia employees, to appoint and fix the compensation of, or to contract for, such officers, assistants, reporters, counsel, and other persons as may be necessary for the performance of its duties. It is authorized to obtain the services of medical and other experts in accordance with the provisions of section 3109 of title 5, United States Code, but at rates not to exceed the daily equivalent of the rate provided for GS-18 of the General Schedule.

(c) The District of Columbia is authorized to detail, on a reimbursable basis, any of its personnel to assist in carrying out the duties of the Commission.

(d) Financial and administrative services (including those related to budgeting and accounting, financial reporting, personnel, and procurement) shall

be provided to the Commission by the District of Columbia, for which payment shall be made in advance, or by reimbursement, from funds of the Commission in such amounts as may be agreed upon by the Chair of the Commission and the District of Columbia government. Regulations of the District of Columbia for the administrative control of funds shall apply to funds appropriated to the Commission. (July 29, 1970, 84 Stat. 493, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1525; June 13, 1994, Pub. L. 103-266, § 1(b)(30), 108 Stat. 713.)

Cross references. — As to provisions of District Charter relating to rules and regulations of Commission, see § 431 of Appendix to this title.

Effect of amendments. — Public Law 103-266 amended (d) to remove gender-specific references.

References in text. — In the third sentence of subsection (a) of this section, “1-1505” was inserted, in brackets, to reflect the renumber-

ing of sec. 1-1504 in the 1981 Edition of the D.C. Code.

Section 1-1506, referred to in the third sentence of subsection (a) of this section, was repealed by the Act of March 6, 1979, D.C. Law 2-153, § 6(b).

The General Schedule, referred to at the end of the last sentence of subsection (b) of this section, appears in 5 U.S.C. § 5332.

§ 11-1526. Removal; involuntary retirement; proceedings.

(a)(1) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction of a crime which is punishable as a felony under Federal law or which would be a felony in the District of Columbia.

(2) A judge of a District of Columbia court shall also be removed from office upon affirmance of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Commission (or upon expiration of the time within which such an appeal may be taken) after a determination by the Commission of —

(A) willful misconduct in office,

(B) willful and persistent failure to perform judicial duties, or

(C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute.

(b) A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of the judge’s judicial duties, and (2) the Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

(c)(1) A judge of a District of Columbia court shall be suspended, without salary —

(A) upon —

(i) proof of conviction of a crime referred to in subsection (a)(1) which has not become final, or

(ii) the filing of an order of removal under subsection (a)(2) which has not become final; and

(B) upon the filing by the Commission of an order of suspension in the District of Columbia Court of Appeals.

Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed or the order of removal is set aside, the judge shall be reinstated and shall recover salary and all rights and privileges pertaining to the judge's office.

(2) A judge of a District of Columbia court shall be suspended from all judicial duties, with such retirement salary as the judge may be entitled to pursuant to subchapter III of this chapter, upon the filing by the Commission of an order of involuntary retirement under subsection (b) in the District of Columbia Court of Appeals. Suspension shall continue until termination of all appeals. If the order of involuntary retirement is set aside, the judge shall be reinstated and shall recover the judge's judicial salary less any retirement salary received and shall be entitled to all the rights and privileges of office.

(3) A judge of a District of Columbia court shall be suspended from all or part of judicial duties, with salary, if the Commission, upon the concurrence of three members, (A) orders a hearing for the removal or retirement of the judge pursuant to this subchapter and determines that suspension is in the interest of the administration of justice, and (B) files an order of suspension in the District of Columbia Court of Appeals. The suspension shall terminate as specified in the order (which may be modified, as appropriate, by the Commission) but in no event later than the termination of all appeals. (July 29, 1970, 84 Stat. 494, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1526; June 13, 1994, Pub. L. 103-266, §§ 1(b)(31)-(35), 108 Stat. 713.)

Cross references. — As to provisions of District Charter relating to removal, suspension, and involuntary retirement of judges, see § 432 of Appendix to this title.

Section references. — This section is referred to in §§ 11-1527, 11-1529, 11-1562, and 11-1564.

Effect of amendments. — Public Law 103-266 amended (b) and (c) to remove gender-specific references.

Constitutional questions may be decided by federal District Court. — Neither the doctrine of abstention nor the doctrine of federal equitable restraint requires the federal District Court to refrain from deciding constitutional questions which have been raised in regard to disciplinary proceedings concerning a judge of the Superior Court and pending before the Commission. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

Subsection (a)(2)(C) constitutional. — Subparagraph (C) of paragraph (2) of subsection (a) of this section is supplemented by the Code of Judicial Conduct, and as so supplemented is not unconstitutionally vague or overbroad in violation of due process. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

Disciplinary proceedings not violative of separation of powers. — The doctrine of separation of powers is not violated in judicial

disciplinary proceedings as an unconstitutional encroachment upon the independence of the judiciary of the District. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

Nor due process. — Even though members of the Commission may themselves be involved in some parts of the investigation and prosecution, as well as being solely responsible for the adjudication in judicial disciplinary proceedings, such combination of functions does not violate due process. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

Nor freedom of speech. — In disciplinary proceedings concerning a judge, the judge's First Amendment right to freedom of speech is not violated by consideration of statements he has made from the bench or otherwise in connection with his judicial duties. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

In disciplinary proceedings before the Commission, consideration of alleged representations, if any, made by the judge in prior proceedings before the Commission in evaluating his candidacy for reappointment would not violate the judge's constitutional rights. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

Due process safeguards determined by Commission. — It is for the Commission, and the special court provided for under § 11-1529 which reviews orders of the Commission, to

determine the due process safeguards to which a judge is entitled during a disciplinary proceeding. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

Institution of investigation. — The Commission should not institute any disciplinary investigation or proceeding unless it believes that the alleged conduct, if proved, may warrant removal from office on those grounds. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

Imposition of sanction. — Before the Commission may impose any sanction it must de-

termine that the judge has engaged in conduct which falls within one of the grounds for removal under this section. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

Warning is permissible sanction. — Where the Commission concludes that the judge should not be removed from office, it may call the judge before it and warn him in camera that a similar offense in the future may warrant his removal. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

Cited in *Scott v. United States*, App. D.C., 559 A.2d 745 (1989).

§ 11-1527. Procedures.

(a)(1) On its own initiative, or upon complaint or report of any person, formal or informal, the Commission may undertake an investigation of the conduct or health of any judge. After such investigation as it deems adequate, the Commission may terminate the investigation or it may order a hearing concerning the health or conduct of the judge. No order affecting the tenure of a judge based on grounds for removal set forth in section 11-1526(a)(2) or 11-1530(b)(3) shall be made except after a hearing as provided by this subchapter. Nothing in this subchapter shall preclude any informal contacts with the judge, or the chief judge of the court in which the judge serves, by the Commission, whether before or after a hearing is ordered, to discuss any matter related to its investigation.

(2) A judge whose conduct or health is to be the subject of a hearing by the Commission shall be given notice of such hearing and of the nature of the matters under inquiry not less than thirty days before the date on which the hearing is to be held. The judge shall be admitted to such hearing and to every subsequent hearing regarding the judge's conduct or health. The judge may be represented by counsel, offer evidence in his or her own behalf, and confront and cross-examine witnesses against the judge.

(3) Within ninety days after the adjournment of hearings, the Commission shall make findings of fact and a determination regarding the conduct or health of a judge who was the subject of the hearing. The concurrence of at least four members shall be required for a determination of grounds for removal or retirement. Upon a determination of grounds for removal or retirement, the Commission shall file an appropriate order pursuant to subsection (a) or (b) of section 11-1526. On or before the date the order is filed, the Commission shall notify the judge, the chief judge of the court in which the judge serves, and the President of the United States.

(b) The Commission shall keep a record of any hearing on the conduct or health of a judge and one copy of such record shall be provided to the judge at the expense of the Commission.

(c)(1) In the conduct of investigations and hearings under this section the Commission may administer oaths, order and otherwise provide for the inspection of books and records, and issue subpoenas [subpoenas] for attendance of witnesses and the production of papers, books, accounts, documents, and testimony relevant to any such investigation or hearing. It may order a

judge whose health is in issue to submit to a medical examination by a duly licensed physician designated by the Commission.

(2) Whenever a witness before the Commission refuses, on the basis of the witness's privilege against self-incrimination, to testify or produce books, papers, documents, records, recordings, or other materials, and the Commission determines that the testimony or production of evidence is necessary to the conduct of its proceedings, it may order the witness to testify or produce the evidence. The Commission may issue the order no earlier than ten days after the day on which it served the Attorney General with notice of its intention to issue the order. The witness may not refuse to comply with the order on the basis of the witness's privilege against self-incrimination, but no testimony or other information compelled under the order (or any information directly or indirectly derived from the testimony or production of evidence) may be used against the witness in any criminal case, nor may it be used as a basis for subjecting the witness to any penalty or forfeiture contrary to constitutional right or privilege. No witness shall be exempt under this subsection from prosecution for perjury committed while giving testimony or producing evidence under compulsion as provided in this subsection.

(3) If any person refuses to attend, testify, or produce any writing or things required by a subpoena [subpoena] issued by the Commission, the Commission may petition the United States district court for the district in which the person may be found for an order compelling that person to attend and testify or produce the writings or things required by subpoena [subpoena]. The court shall order the person to appear before it at a specified time and place and then and there shall consider why that person has not attended, testified, or produced writings or things as required. A copy of the order shall be served upon that person. If it appears to the court that the subpoena [subpoena] was regularly issued, the court shall order the person to appear before the Commission at the time or place fixed in the order and to testify or produce the required writings or things. Failure to obey the order shall be punishable as contempt of court.

(4) In pending investigations or proceedings before it, the Commission may order the deposition of any person to be taken in such form and subject to such limitation as may be prescribed in the order. The Commission may file in the Superior Court a petition, stating generally, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and directions, if any, of the Commission requesting an order requiring the person to appear and testify before a designated officer. Upon the filing of the petition the Superior Court may order the person to appear and testify. A subpoena [subpoena] for such deposition shall be issued by the clerk of the Superior Court and the deposition shall be taken and returned in the manner prescribed by law for civil actions.

(d) It shall be the duty of the United States marshals upon the request of the Commission to serve process and to execute all lawful orders of the Commission.

(e) Each witness, other than an officer or employee of the United States or the District of Columbia, shall receive for attendance the same fees, and all

witnesses shall receive the allowances, prescribed by section 15-714 for witnesses in civil cases. The amount shall be paid by the Commission from funds appropriated to it. (July 29, 1970, 84 Stat. 495, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1527; June 13, 1994, Pub. L. 103-266, §§ 1(b)(36)-(41), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (a), (c), and (e) to remove gender-specific references.

Editor's notes. — Throughout subsection (c), "subpoena" and "subpoenas" were inserted, in brackets, to correct misspellings.

§ 11-1528. Privilege; confidentiality.

(a)(1) Subject to paragraph (2), the filing of papers with, and the giving of testimony before, the Commission shall be privileged. Subject to paragraph (2), hearings before the Commission, the record thereof, and materials and papers filed in connection with such hearings shall be confidential.

(2)(A) The judge whose conduct or health is the subject of any proceedings under this chapter may disclose or authorize the disclosure of any information under paragraph (1).

(B) With respect to a prosecution of a witness for perjury or on review of a decision of the Commission, the record of hearings before the Commission and all papers filed in connection with such hearing shall be disclosed to the extent required for such prosecution or review.

(C) Upon request, the Commission shall disclose, on a privileged and confidential basis, to the District of Columbia Judicial Nomination Commission any information under paragraph (1) concerning any judge being considered by such nomination commission for elevation to the District of Columbia Court of Appeals or for chief judge of a District of Columbia court.

(b) If the Commission determines that no grounds for removal or involuntary retirement exist it shall notify the judge and inquire whether the judge desires the Commission to make available to the public information pertaining to the nature of its investigation, its hearings, findings, determinations, or any other fact related to its proceedings regarding the judge's health or conduct. Upon receipt of such request in writing from the judge, the Commission shall make such information available to the public. (July 29, 1970, 84 Stat. 497, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1528; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 11; June 13, 1994, Pub. L. 103-266, § 1(b)(42), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (b) to remove gender-specific references.

Formal oath of confidentiality not required. — The Commission's requirement that every witness in every investigation or other proceeding shall swear or affirm not to disclose

the existence of the proceeding or the identity of the judge involved, being framed in terms of "witnesses," does not require the special counsel to require everyone with whom he has contact in looking into a complaint to make a formal oath or affirmation. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

§ 11-1529. Judicial review.

(a) A judge aggrieved by an order of removal or retirement filed by the Commission pursuant to subsection (a) or (b) of section 11-1526 may seek

judicial review thereof by filing notice of appeal with the Chief Justice of the United States. Notice of appeal shall be filed within 30 days of the filing of the order of the Commission in the District of Columbia Court of Appeals.

(b) Upon receipt of notice of appeal from an order of the Commission, the Chief Justice shall convene a special court consisting of three Federal judges designated from among active or retired judges of the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia.

(c) The special court shall review the order of the Commission appealed from and, to the extent necessary to decision and when presented, shall decide all relevant questions of law and interpret constitutional and statutory provisions. Within 90 days after oral argument or submission on the briefs if oral argument is waived, the special court shall affirm or reverse the order of the Commission or remand the matter to the Commission for further proceedings.

(d) The special court shall hold unlawful and set aside a Commission order or determination found to be —

- (1) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial evidence.

In making the foregoing determinations, the special court shall review the whole record or those parts of it cited by the judge or the Commission, and shall take due account of the rule of prejudicial error.

(e) As appropriate and to the extent consistent with this chapter, the Federal Rules of Appellate Procedure governing appeals in civil cases shall apply to appeals taken under this section.

(f) Decisions of the special court shall be final and conclusive. (July 29, 1970, 84 Stat. 497, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1529.)

Section references. — This section is referred to in § 11-1530.

Subsection (b) is not unconstitutional on the theory that it imposes purely local responsibilities upon the Supreme Court. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

“Final and conclusive,” as used in subsection (f), does not mean that the Supreme Court cannot issue an appropriate writ to bring before that Court a decision of the special court

authorized in this section. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

Determination of due process safeguards for disciplinary proceedings. — It is for the Commission and for the special court provided for under this section, to determine the due process safeguards to which a judge is entitled during a disciplinary proceeding. *Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

§ 11-1530. Financial statements.

(a) Pursuant to such rules as the Commission shall promulgate, each judge of the District of Columbia courts shall, within one year following the date of enactment of the District of Columbia Court Reorganization Act of 1970 and at

least annually thereafter, file with the Commission the following reports of the judge's personal financial interests:

(1) A report of the judge's income and the judge's spouse's income for the period covered by the report, the sources thereof, and the amount and nature of the income received from each such source.

(2) The name and address of each private foundation or eleemosynary institution, and of each business or professional corporation, firm, or enterprise in which the judge was an officer, director, proprietor, or partner during such period;

(3) The identity of each liability of \$5,000 or more owed by the judge or by the judge and the judge's spouse jointly at any time during such period.

(4) The source and value of all gifts in the aggregate amount or value of \$50 or more from any single source received by the judge during such period, except gifts from the judge's spouse or any of the judge's children or parents.

(5) The identity of each trust in which the judge held a beneficial interest having a value of \$10,000 or more at any time during such period, and in the case of any trust in which the judge held any beneficial interest during such period, the identity, if known, of each interest in real or personal property in which the trust held a beneficial interest having a value of \$10,000 or more at any time during such period. If the judge cannot obtain the identity of the trust interest, the judge shall request the trustee to report that information to the Commission in such manner as the Commission shall by rule prescribe.

(6) The identity of each interest in real or personal property having a value of \$10,000 or more which the judge owned at any time during such period.

(7) The amount or value and source of each honorarium of \$300 or more received by the judge during such period.

(8) The source and amount of all money, other than that received from the United States Government, received in the form of an expense account or as reimbursement for expenditures during such period.

(b)(1) Except as provided in paragraph (2) of this subsection the content of any report filed under this section shall not be open to inspection by anyone other than (A) the person filing the report, (B) authorized members, alternate members, or staff of the Commission to determine if this section has been complied with or in connection with duties of the Commission under this subchapter, or (C) a special court convened under section 11-1529 to review a removal order of the Commission.

(2) Reports filed pursuant to paragraphs (2) and (7) of subsection (a) shall be made available for public inspection and copying promptly after filing and during the period they are kept by the Commission, and shall be kept by the Commission for not less than three years.

(3) The intentional failure by a judge of a District of Columbia court to file a report required by this section, or the filing of a fraudulent report, shall constitute willful misconduct in office and shall be grounds for removal from office under section 11-1526(a)(2). (July 29, 1970, 84 Stat. 498, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1530; June 13, 1994, Pub. L. 103-266, §§ 1(b)(43)-(50), 108 Stat. 713.)

Section references. — This section is referred to in § 11-1527.

Effect of amendments. — Public Law 103-266 amended (a) to remove gender-specific references.

References in text. — The date of enactment of the District of Columbia Court Reorganization Act of 1970, referred to in the introductory language of subsection (a) of this section, is July 29, 1970.

Subchapter III. Retirement.

§ 11-1561. Definitions.

For purposes of this subchapter —

(1) The term “judge” means any judge of the District of Columbia Court of Appeals or the Superior Court or any person with judicial service as described in paragraph (2) of this section.

(2) The term “judicial service” means service as a judge in the District of Columbia Court of Appeals, the Superior Court, or the former Juvenile Court of the District of Columbia, District of Columbia Tax Court, police court, municipal court, Municipal Court of Appeals, or District of Columbia Court of General Sessions.

(3) The terms “retire” and “retirement” include retirement, resignation, or failure to be recommissioned or reappointed upon the expiration of a commission.

(4) The term “fund” means the District of Columbia Judges’ Retirement Fund established by section 1-1814(a) [1-714(a)].

(5) The term “widow” means a surviving wife of a judge who either (A) has been married to the judge for at least two years preceding his death or (B) is the mother of issue by the marriage and has not remarried.

(6) The term “widower” means a surviving husband of a judge who either (A) has been married to the judge for at least two years preceding her death or (B) is the father of issue by the marriage and has not remarried.

(7) The term “Commissioner” [“Mayor”] means the Commissioner [Mayor] of the District of Columbia.

(8) The term “child” means —

(A) an unmarried child under eighteen years of age, including (i) an adopted child, and (ii) a stepchild or recognized natural child who lived with the judge in a regular parent-child relationship;

(B) such unmarried child regardless of age who is incapable of self-support because of mental or physical disability incurred before age eighteen; or

(C) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university or comparable recognized educational institution. For the purpose of this paragraph, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while the child is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an

interim between school years if the interim is not more than five months and if the child shows to the satisfaction of the Commissioner [Mayor] that the child has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(9) The term “lump-sum credit for retirement” means the unrefunded amount consisting of —

(A) retirement deductions made from the basic salary of a judge[:];

(B) amounts deposited covering earlier judicial and nonjudicial service; and

(C) interest on the deductions and deposits at 4 per centum a year to December 31, 1947, and 3 per centum a year thereafter compounded annually to December 31, 1956, or, in the case of a judge separated or transferred to a position not within the purview of this section before the judge has completed five years of service, to the date of the separation or transfer or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 [1-701] et seq.), whichever is earlier;

but the term “lump-sum credit for retirement” does not include interest —

(i) if the service covered thereby aggregates one year or less; or

(ii) for the fractional part of a month in the total service.

(10) The term “lump-sum credit for survivor annuity” means the unrefunded amount consisting of —

(A) survivor annuity deductions made from the salary of a judge;

(B) amounts deposited for survivor annuity covering earlier judicial and nonjudicial service; and

(C) interest on the deductions and deposits at 4 per centum a year to December 31, 1947, and 3 per centum a year thereafter compounded annually to December 31, 1956, or, in the case of a judge separated or transferred to a position not within the purview of this section before the judge has completed five years of service, to the date of the separation or transfer or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 [1-701] et seq.), whichever is earlier;

but the term “lump-sum credit for survivor annuity” does not include interest —

(i) if the service covered thereby aggregates one year or less; or

(ii) for the fractional part of a month in the total service. (July 29, 1970, 84 Stat. 499, Pub. L. 91-358, title I, § 111; Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, § 2(a)(5), (6); 1973 Ed., § 11-1561; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 124(b)(1), 254(a)(1); June 13, 1994, Pub. L. 103-266, §§ 1(b)(51)-(53), 108 Stat. 713.)

Cross references. — As to definition of “retirement program,” see § 1-702.

Section references. — This section is referred to in §§ 1-702, 11-1568, 11-1568.1, and 11-1569.

Effect of amendments. — Public Law 103-

266 amended (8)(C), (9)(C), and (10)(C) to remove gender-specific references.

References in text. — In paragraphs (4), (9)(C) and (10)(C) of this section, “1-714” and “1-701” were inserted, where applicable, in brackets, to reflect the renumbering of section

1-1814 and sec. 1-1801 in the 1981 Edition of the D.C. Code.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1562. Eligibility for retirement.

(a) A judge is eligible for retirement under this subchapter when the judge has completed ten years of judicial service, whether continuous or not, or upon mandatory retirement as provided in section 11-1502.

(b) The retirement salary of a judge who retires shall commence as follows:

(1) With twenty or more years of judicial service, at age fifty.

(2) With less than twenty years of judicial service, at age sixty, unless the judge elects to receive a reduced salary beginning at age fifty-five or at the date of retirement if subsequent to that age.

(c) A judge with five years or more of judicial service, including civilian service performed by the judge which is creditable under section 8332 of title 5, United States Code, may voluntarily retire for a mental or physical disability which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of judicial duties. Such disability shall be established by furnishing to the Commissioner [Mayor] a certificate of disability signed by a duly licensed physician, approved by the Surgeon General of the United States, and containing such information and conclusions as the Commissioner [Mayor] by regulation may require consistent with this subsection.

(d) Eligibility for retirement salary of a judge involuntarily retired for disability under section 11-1526(b) shall not be conditioned upon prior service. (July 29, 1970, 84 Stat. 500, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1562; June 13, 1994, Pub. L. 103-266, § 1(b)(54), 108 Stat. 713.)

Section references. — This section is referred to in §§ 11-1564, 11-1566, and 11-1568.

Effect of amendments. — Public Law 103-266 amended (a) and (b) to remove gender-specific references.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1563. Withholding of retirement payments; lump-sum credit.

(a) There shall be deducted and withheld from the basic salary of each judge appointed after October 31, 1964, and each judge appointed before November

1, 1964, who has elected to come within the provisions of this subchapter an amount equal to $3\frac{1}{2}$ per centum of the judge's basic salary. Amounts so deducted and withheld shall be paid to the Custodian of Retirement Funds (as defined in section 1-1802(6) [1-702(6)]) for deposit in the fund. Each judge subject to this section shall be deemed to consent and agree to such deductions from basic salary, and payment less such deductions shall constitute a full and complete discharge and acquittance of all claims and demands whatsoever for all regular service during the period covered by such payment, except the right to the benefits to which the judge shall be entitled under this subsection, notwithstanding any law, rule, or regulation affecting the judge's salary.

(b) If the judge has not previously so deposited, each judge subject to this section shall deposit in the fund, with interest computed in accordance with section 11-1564(d)(2), a sum equal to $3\frac{1}{2}$ per centum of the judge's basic salary received for judicial service performed by the judge as a judge prior to the date the judge became subject to the District of Columbia Judges Retirement Act of 1964. Each judge may elect to make such deposits in installments during the continuance of the judge's judicial service in such amounts as may be determined in each instance by the Commissioner [Mayor]. Notwithstanding the failure of any judge to make such deposits, credit shall be allowed for the service rendered but the retirement pay for such judge shall be reduced by 10 per centum of such deposit remaining unpaid unless the judge shall elect to eliminate the service involved for purposes of retirement salary computation, except as provided in section 11-1564(d).

(c) If any judge who is subject to this section is removed, resigns, or fails to be recommissioned or reappointed, the judge is entitled to be paid his [the judge's] lump-sum credit for retirement if application for payment is filed with the Commissioner [Mayor] at least thirty-one days before the commencing date of any retirement salary for which the judge is eligible. The receipt of the lump-sum credit for retirement by the judge voids all retirement salary rights under this subchapter, until the judge is reemployed in judicial service subject to this subchapter.

(d) If a judge who has not elected to be within the survivor annuity provisions of this subchapter dies while in regular active service, or while receiving retirement salary under this subchapter but before having recouped all contributions, the lump-sum credit for retirement or the balance after deduction of retirement salary paid prior to death, if applicable, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving the judge in the order of precedence established in section 11-1569(b). Such payments shall be a bar to recovery by any other person. (July 29, 1970, 84 Stat. 501, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1563; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 124(b)(2), 254(b)(1); Oct. 1, 1989, 102 Stat. 2269-12, Pub. L. 100-462, § 135(a); June 13, 1994, Pub. L. 103-266, §§ 1(b)(55)-(57), 108 Stat. 713.)

Section references. — This section is referred to in § 11-1566.

266 amended this section to remove gender-specific references.

Effect of amendments. — Public Law 103-

References in text. — In the second sen-

tence of subsection (a) of this section, "1-702(6)" was inserted, in brackets, to reflect the renumbering of section 1-1802(6) in the 1981 Edition of the D.C. Code.

The District of Columbia Judges Retirement Act of 1964, referred to in the first sentence in subsection (b) of this section, is the Act of October 13, 1964, 78 Stat. 1055, Pub. L. 88-644.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1564. Computation of retirement salary; election to credit other service.

(a) The retirement salary of a judge who retires pursuant to section 11-1562(a) and (b) shall be paid annually in equal monthly installments during the remainder of the judge's life and shall bear the same ratio to the judge's basic salary immediately prior to the date of the judge's retirement as the total of the judge's aggregate years of service bears to the period of thirty years. A judge who elects to receive a reduced retirement salary pursuant to section 11-1562(b)(2) shall have retirement salary reduced by one-twelfth of 1 per centum for each month or fraction of a month the judge is under the age of sixty at the time of the commencement of reduced retirement salary. In no event shall the retirement salary (including the amount provided by subsection (c) of this section) of a judge exceed 80 per centum of the judge's basic salary immediately prior to the date of the judge's retirement.

(b) The retirement salary of a judge retired for disability pursuant to section 11-1526(b) or section 11-1562(c) or (d) shall be paid annually in equal monthly installments during the remainder of the judge's life and shall be computed as provided in subsection (a). If a judge is retired for disability, the judge's retirement salary shall not be reduced because of the judge's age at the time of retirement. In no event shall the retirement salary of a judge retired for disability be less than 50 per centum or exceed 80 per centum of the judge's basic salary immediately prior to the date of the judge's retirement.

(c) In computing the retirement salary of a judge retiring under section 11-1562, the judge shall be entitled, if the judge so elects during the continuance of judicial service or at the time of retirement, to receive, in addition to the amount provided for in subsection (a) of this section, an amount (payable annually in equal monthly installments during the remainder of the judge's life) based on military and civilian service performed by the judge which is creditable under section 8332 of title 5, United States Code, computed in accordance with section 8339 (a), (b), (c), (d), (g), and (h) of that title, as applicable, subject to the provisions of section 8334 (c) and (d) of that title and the provisions of subsection (d) of this section; except that average pay for the purpose of the computation shall be deemed to be the basic salary of the judge immediately prior to the date of retirement under section 11-1562.

(d)(1) The crediting of service with respect to any judge under subsection (c) of this section shall be made on the standard basis of a deposit in the sum equal

to 3½ per centum of the judge's basic salary, pay, or compensation for civilian service creditable under section 8332 of title 5, United States Code, with interest as provided in paragraph (2) of this subsection.

(2) Interest on deposits under this subsection and section 11-1567(b) shall be computed as follows:

(A) Interest shall be paid at a rate which (as determined by the Mayor of the District of Columbia) is equal to the average rate of return on investment (adjusted to the nearest one-eighth of 1 per centum) for the District of Columbia Judges' Retirement Fund (established by section 1-1814 [1-714]) for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if the judge makes a lump-sum payment or during which the judge makes the first payment if the judge makes installment deposits, except that —

(i) for so much of any such period which occurs between the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 [1-701] et seq.) and October 1, 1980, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest one-eighth of 1 per centum) shall be used in determining the interest rate to be paid on deposits;

(ii) for so much of any such period which occurs between January 1, 1948, and the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 [1-701] et seq.), the rate of 3 per centum a year, compounded annually, shall be used in determining the interest rate to be paid on deposits; and

(iii) for so much of any such period which occurs prior to January 1, 1948, the rate of 4 per centum a year, compounded annually, shall be used in determining the interest rate to be paid on deposits.

(B) Interest shall be payable for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made.

(C) If a judge elects to make deposit in installments, each payment shall include interest on that portion of the refund which is then being redeposited. Interest may not be charged for a period of separation from the service which began before October 31, 1956.

(3) Deposit under this subsection may not be required for —

(A) service before August 1, 1920;

(B) military service; or

(C) service for the Panama Railroad Company before January 1, 1924.

(4) If a judge elects to be credited with service under subsection (c) of this section, the judge's lump-sum credit, or any remaining balance thereof, in the Civil Service Retirement and Disability Fund or in the retirement fund of any other retirement system for civilian employees of the Government of the United States or the District of Columbia, shall be transferred to the District

of Columbia Judges' Retirement Fund established by section 1-1814(a) [1-714(a)]. The judge shall be deemed to consent to the transfer. The transfer shall be a complete discharge and acquittance of all claims and demands against the retirement system from which the funds were transferred on account of the service so credited.

(5) A judge whose lump-sum credit is transferred to the fund under paragraph (4) of this subsection is not required to make deposits in addition to the amount transferred for periods of service for which full contributions were made to the retirement system from which the transfer was made.

(6) In the case of a judge whose lump-sum credit has been transferred to the fund under paragraph (4) of this subsection and who has not elected a survivor annuity under section 11-1566, or prior corresponding provision of law, the Commissioner [Mayor] shall refund to the judge any amount which the Commissioner [Mayor] determines to be in excess of the amount of the deposit required by this subsection. In the case of a judge whose lump-sum credit has been transferred to the fund under paragraph (4) of this subsection and who, prior to the effective date of this section, had elected a survivor annuity and made deposits to the fund for survivor annuity purposes, the Commissioner [Mayor] shall refund to the judge any amount which the Commissioner [Mayor] determines in excess of the amount of the deposit required by section 11-1567.

(7) If any civilian service performed by the judge which is creditable under section 8332 of title 5, United States Code, is not covered by the amount of the lump-sum credit transferred under paragraph (4) of this subsection, the judge may make deposit, on the standard basis prescribed by paragraph (1) of this subsection, with interest as provided in paragraph (2) of this subsection, in accordance with and subject to the applicable provisions of section 8334 (c) and (d) of that title, of the amount or amounts necessary for the judge to receive full credit for that service for the purposes of subsection (c) of this section. The deposit may be made, as the judge may elect, in installments, during the continuance of the judge's judicial service, in such amounts as the Commissioner [Mayor] may determine in each instance, or in a lump sum prior to or at the time of the judge's retirement under section 11-1562. A judge electing to make installment deposits shall not be given full credit for the service until the total required deposit is made.

(8) For the purpose of survivor annuity, deposits authorized by this subsection also may be made by the survivor of a judge.

(e) Nothing in this subchapter shall prevent a judge eligible therefor from simultaneously receiving retirement salary under this section and any annuity or retired pay to which the judge would otherwise be entitled under any other law without regard to this subchapter. However, in computing the retirement salary of a judge under this section, service used in the computation of such other annuity shall not be credited. (July 29, 1970, 84 Stat. 501, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1564; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 124(b)(3), 254(b)(2); June 13, 1994, Pub. L. 103-266, §§ 1(b)(58)-(68), 108 Stat. 713.)

Section references. — This section is referred to in §§ 11-1563, 11-1566, 11-1567, and 11-1568.

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

References in text. — In subsection (d)(2)(A) and (d)(4) and subsection (d)(2)(A)(i) and (ii), “1-714” and “1-701” were inserted, where applicable, in brackets, to reflect the renumbering of section 1-1814 and sec. 1-1801 in the 1981 Edition of the D.C. Code.

Change in government. — This section originated at a time when local government powers were delegated to the District of Colum-

bia Council and to a Commissioner of the District of Columbia: The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1565. Service by retired judges.

Any retired judge performing judicial duties as a senior judge on the District of Columbia Court of Appeals or the Superior Court shall be entitled, during the period for which he or she serves, to receive the same daily rate of pay as a judge on the court in which he or she performs such duties. The cumulative daily earnings of a senior judge, in any single year, when added to the annual retirement salary, may not exceed the current annual salary of a judge of the court in which he or she performs such duties. No deduction shall be withheld for health benefits, Federal employee's life insurance, or retirement purposes from the salary paid to a judge during judicial service. The performance of such judicial service shall not create an additional retirement, change retirement, or create, or in any manner affect a survivor annuity. (July 29, 1970, 84 Stat. 503, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1565; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 14(c).)

Section references. — This section is referred to in §§ 11-1566 and 11-1567.

§ 11-1566. Survivor annuity; election; relinquishment.

(a) Any judge, whether or not subject to sections 11-1562 to 11-1565, may, by written election filed with the Commissioner [Mayor] within six months after the date on which the judge takes office or is reappointed or recommissioned, or within six months after the judge marries, elect to be within the survivor annuity provisions of this subchapter.

(b) Any judge in regular active service or any retired judge, who shall have elected survivor annuity, and who after that election is unmarried and does not have a dependent child, may elect —

(1) to terminate the deductions and withholdings from the judge's salary under section 11-1567(a) and any installment payments elected to be made under section 11-1567(b); and

(2) to have paid to the judge the lump-sum credit for survivor annuity. Any election under this subsection shall be made in writing and filed with the Mayor.

(c) If any judge who shall have elected survivor annuity resigns from office otherwise than under the provisions of this subchapter or is removed, the judge shall be entitled to be paid the lump-sum credit for survivor annuity.

(d) Payment of the lump-sum credit for survivor annuity as provided in this section shall extinguish all claims with respect to survivor annuity. (July 29, 1970, 84 Stat. 503, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1566; June 13, 1994, Pub. L. 103-266, §§ 1(b)(69)-(71), 108 Stat. 713.)

Section references. — This section is referred to in §§ 11-1564, 11-1568.1, 11-1568.2, and 11-1569.

Effect of amendments. — Public Law 103-266 amended (a), (b), and (c) to remove gender-specific references; and substituted “Mayor” for “Commissioner” near the end of (b).

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1567. Survivor annuity; payments to fund.

(a) There shall be deducted and withheld from the salary (whether basic or retirement) of each judge who has elected survivor annuity a sum equal to 3.5 percent of that salary. The amounts so deducted and withheld shall, in accordance with such procedures as may be prescribed by the Mayor, be deposited in the fund. Every judge who elects survivor annuity shall be deemed thereby to consent and agree to the deductions from the judge’s salary as provided in this subsection, and payment less such deductions shall constitute a full and complete discharge and acquittance of all claims and demands whatever for all judicial services rendered by such judge during the period covered by such payment, except the right to the benefits to which the judge or the judge’s survivors shall be entitled under the survivor annuity provisions of this subchapter.

(b) If the judge has not previously so deposited, each judge who has elected survivor annuity shall deposit to the fund, with interest computed in accordance with section 11-1564(d)(2), a sum equal to 3.5 percent of the judge’s salary received for judicial service and of retirement salary (but excluding salary for judicial service under section 11-1565); and a sum equal to 3.5 percent of the judge’s basic salary, pay, or compensation for civilian service creditable under section 8332 of title 5, United States Code, with interest as provided in section 11-1564(d). Except to the extent that the Mayor has made refund to the judge under section 11-1564(d)(6), deposit is not required with respect to that portion of the service of the judge covered by the transfer, under section 11-1564(d)(4), of the judge’s lump-sum credit to the fund. In addition, deposit may not be required for the types of service described in section 11-1564(d)(3). Each judge may elect to make deposits under this subsection in installments during the continuance of the judge’s judicial service in such amounts as may be determined in each instance by the Mayor. Deposits under this subsection also may be made by the survivor of a judge.

(c) If a judge or survivor fails to make such deposits, credit shall be allowed for the service, but the annuity of the widow or widower of such judge shall be reduced by an amount equal to 10 per centum of the deposit required by this section, computed as of the date of the death of the judge, unless the widow or widower elects to eliminate the service not covered by deposit entirely from credit for computation purposes except as provided in section 11-1564(d)(3). (July 29, 1970, 84 Stat. 504, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1567; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 254(b)(3); June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(a)(1); June 13, 1994, Pub. L. 103-266, §§ 1(b)(72), (73), 108 Stat. 713.)

Section references. — This section is referred to in §§ 11-1564, 11-1566, 11-1568, and 11-1569.

266 amended (a) and (b) to remove gender-specific references; and substituted "Mayor" for "Commissioner" once in (a) and twice in (b).

Effect of amendments. — Public Law 103-

§ 11-1568. Survivor annuity; entitlement; computation.

(a) The service of a judge for the purpose of any provision of this subchapter which refers to this subsection includes the judge's judicial service (and retired service for which deductions are made) and, subject to section 8334 (d) of title 5, United States Code, the judge's military and civilian service which is creditable under section 8332 of that title.

(b) Nothing in this subchapter shall prevent a widow or widower eligible therefor from simultaneously receiving a survivor annuity under this subchapter and any other annuity (survivor or otherwise) or retired pay to which he or she would otherwise be entitled under any other law without regard to this subchapter. However, in computing the survivor annuity of that widow or widower under this subchapter, service used in the computation of such other annuity shall not be credited.

(c) If a judge who has elected a survivor annuity dies in regular active service or after having retired from such service with at least five years of allowable service under this section for which payments have been withheld or deposits made, the survivor annuity shall be paid as follows:

(1) If the judge is survived by a widow or widower but no child, the widow or widower shall receive, beginning on the day after the judge dies, an amount computed as provided in subsection (e).

(2) If the judge is survived by a widow or widower and one or more children —

(A) the widow or widower shall receive an immediate annuity in the amount computed as provided in subsection (e); and

(B) there also shall be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow or widower, but not to exceed the lesser of (i) \$8,424 per year divided by the number of such children or (ii) \$2,808 per child per year.

(3) If the judge leaves no surviving widow or widower but leaves a surviving child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which the widow or widower would have been entitled under paragraph (1) of this subsection

had he or she survived, but not to exceed the lesser of (A) \$10,110 per year divided by the number of such children or (B) \$3,370 per child per year.

For the purpose of computing, under this subsection, the annuity of a child that commences on or after January 1, 1987, the figures \$8,424, \$2,808, \$10,110, and \$3,370 (provided in paragraphs (2) and (3)) shall be increased by the total percentage of the increases allowed and in force with respect to retirement salaries of judges under section 11-1571(a) of this title on or after such date. An annuity payable to a widow or widower under this section shall be terminable upon death or upon remarriage prior to the attainment of fifty-five years of age. The annuity payable to a child shall be terminable upon the child's death or marriage or ceasing to be a child as defined in section 11-1561(8). In case of the death of a widow or widower of a judge leaving a child or children of the judge surviving, the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the annuity of a child is terminated, the annuities of any remaining child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was terminated had not survived the judge.

(d) Questions of disability or other eligibility requirements of a child under this section shall be determined by the Mayor who may order such medical or other examinations at any time as the Mayor deems necessary with respect to determining the facts concerning the disability of a child receiving or applying for an annuity under this subchapter. An annuity may be denied or suspended for failure to submit to examination.

(e) The annuity of a widow or widower of a judge or retired judge who elected a survivor annuity shall be equal to —

(1) in the case of a judge who dies while in active regular service as a judge, the greater of —

(A) 55 percent of the retirement salary the judge would have been entitled to receive (as computed under section 11-1564) if the judge had retired on the day before the date of death (without regard to the age requirements prescribed in section 11-1562(b)), or

(B) 55 percent of the retirement salary the judge would have been entitled to receive (as computed under section 11-1564) if the judge had retired on the day before the date of death with 15 years of service for the purposes of this subchapter (without regard to the age requirements prescribed in section 11-1562(b)); and

(2) In the case of a retired judge, 55 percent of the retirement salary payable to such judge on the day before the date of the judge's death. (July 29, 1970, 84 Stat. 504, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1568; June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(a)(2); June 13, 1994, Pub. L. 103-266, §§ 1(b)(74)-(76), 108 Stat. 713.)

Section references. — This section is referred to in § 11-1569.

Effect of amendments. — Public Law 103-266 amended (a) and (c) to remove gender-specific references; and, in the first sentence of

(d), substituted "Mayor who" for "Commissioner who" and "the Mayor deems" for "he deems."

Application of Pub. L. 99-335. — Section 601(b) of Pub. L. 99-335 provided that the benefits conferred by § 11-1568, by reason of

the amendments made by subsection (a) shall apply to individuals eligible for annuities under such sections on or after June 6, 1986, except that:

(1) Such annuities shall be computed in accordance with the provisions of such section, as amended by subsection (a), notwithstanding contributions or deposits made in accordance with applicable law at lower rates; and

(2) No additional liability shall be created with respect to deposits made in accordance with applicable law before June 6, 1986, or after such date pursuant to an installment payment election made under § 11-1567(b) before such date.

§ 11-1568.1. Opportunity to revoke a previous survivor annuity election.

(1)(A) Any individual who, before the date of the enactment of this Act, made an election under section 11-1566 of title 11 of the District of Columbia Code, to come within the purview of the survivor annuity provisions of subchapter III of chapter 15 of such title may revoke that election. Such a revocation shall constitute a complete withdrawal from the survivor annuity program provided for in such subchapter.

(B) A revocation under subparagraph (A) shall be submitted in writing to the Mayor of the District of Columbia.

(2) A revocation under paragraph (1) shall be effective on the day it is received by the official referred to in subparagraph (B) of such paragraph.

(3)(A) On the effective date of a revocation under paragraph (1), any right to survivor benefits (to which the revocation relates) for the survivors of the individual who makes the revocation shall terminate, and all amounts credited to the account of such individual under section 11-1570(c) of title 11 of the District of Columbia Code, together with interest computed as provided in subparagraph (B), shall be returned to that individual in a lump-sum payment.

(B) For the purpose of subparagraph (A), interest shall be computed in accordance with section 11-1561(10)(C) of title 11 of the District of Columbia Code.

(4)(A) Any individual who makes a revocation under paragraph (1) and who thereafter becomes eligible to make an election under section 11-1566 of title 11 of the District of Columbia Code may make such election only if such individual redeposits, to the credit of the District of Columbia Judge's Retirement Fund referred to in section 11-1561(4) of such title, the full amount of the lump-sum payment made to such individual under paragraph (4), together with interest.

(B) For the purpose of subparagraph (A), interest shall be computed at 3 percent per annum, compounded on December 31 of each year from the date of the lump-sum payment referred to in such subparagraph until the date on which the amount referred to in such subparagraph is redeposited under such subparagraph. (June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(c).)

References in text. — "This Act," referred to in paragraph (1)(A), is 100 Stat. 514, Pub. L. 99-335.

The reference in paragraph (4)(A) to § 11-1566 probably should be to § 11-1566.

§ 11-1568.2. Additional opportunity to make a survivor annuity election.

(1) Any individual who, on or before the date of the enactment of this Act, has not made an election under section 11-1566(a) of title 11 of the District of Columbia Code, to come within the purview of the survivor annuity provisions of subchapter III of chapter 15 of such title and is no longer entitled to make such an election may make such an election. Any such election shall be submitted in writing to the Mayor of the District of Columbia.

(2) An election under paragraph (1) shall be effective on the day it is received by the official referred to in such paragraph. (June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(d).)

References in text. — “This Act,” referred to in the first sentence of paragraph (1), is 100 Stat. 514, Pub. L. 99-335.

§ 11-1568.3. Period for exercise of right to revoke or elect.

The right to revoke an election under subsection (d) or to make an election under subsection (e) is irrevocably waived if not exercised within 180 days after the date of the enactment of this Act. (June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(e).)

References in text. — The reference to “subsection (d)” should be to subsection (c) of § 601 of Pub. L. 99-335 which is codified at § 11-1568.1.

The reference to “subsection (e)” should be to subsection (d) of § 601 of Pub. L. 99-335 which is codified at § 11-1568.2.

“This Act” is 100 Stat. 514, Pub. L. 99-335.

§ 11-1569. Survivor annuity; payment; order of precedence.

(a) Survivor annuities shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued.

(b) In any case in which —

(1) a judge who has elected survivor annuity shall die (A) while in regular active service after having rendered five years of allowable service as provided in section 11-1568(a) or while receiving retirement salary under this subchapter but without a survivor or survivors entitled to annuity under section 11-1568(c) or (B) while in regular active service but before having rendered five years of allowable service; or

(2) the right of all persons entitled to an annuity under section 11-1568(c) based on the service of the judge shall terminate before a valid claim therefor shall have been established;

the lump-sum credit shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence, and such payment shall be a bar to recovery by any other person:

First, to the beneficiary or beneficiaries whom the judge may have designated in writing to the Mayor prior to the judge's death;

Second, if there be no such beneficiary, to the widow or widower of the judge;

Third, if none of the above, to the child or children of the judge and the descendants of any deceased children by representation;

Fourth, if none of the above, to the parents of the judge or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such judge;

Sixth, if none of the above, to such other next of kin of the judge as may be determined by the Mayor to be entitled under the laws of the domicile of the judge at the time of the judge's death.

Determination as to the widow, widower, or child of a judge for purposes of this subsection shall be made by the Mayor without regard to the definitions in section 11-1561.

(c) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge shall terminate before the aggregate amount of annuity paid (together with any amounts received by the judge as retirement salary) equals the total amount credited to the individual account of the judge, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 [1-701] et seq.), whichever is earlier, the difference shall be paid upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (b).

(d) Any accrued annuity remaining unpaid upon the termination (other than by reason of death) of the annuity of any person based upon the service of a judge shall be paid to such person. Any accrued annuity remaining unpaid upon the death of any person receiving an annuity based upon the service of a judge shall be paid, upon establishment of a valid claim therefor, in the following order of precedence:

First, to the duly appointed executor or administrator of the estate of the annuitant;

Second, if there is no such executor or administrator, payment may be made, after the expiration of thirty days from the date of death of the annuitant, to such person or persons as may appear in the judgment of the Mayor to be legally entitled thereto, and such payments shall be a bar to recovery by any other person.

(e) Where any payment under sections 11-1566 to 11-1569 is to be made to a minor or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the jurisdiction wherein the claimant resides or is otherwise legally vested with the care of the claimant or the claimant's estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the

laws of the jurisdiction wherein the claimant resides, payment may be made to any person who, in the judgment of the Mayor, is responsible for the care of the claimant, and the payment bars recovery by any other person. (July 29, 1970, 84 Stat. 506, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1569; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 254(a)(2); June 13, 1994, Pub. L. 103-266, §§ 1(b)(77)-(79), 108 Stat. 713.)

Section references. — This section is referred to in § 11-1563.

Effect of amendments. — Public Law 103-266 amended (b), (d) and (e) to remove gender-specific references and substituted "Mayor" for "Commissioner" throughout.

References in text. — In subsection (c) of this section, "1-701" was inserted, in brackets, to reflect the renumbering of sec. 1-1801 in the 1981 Edition of the D.C. Code.

§ 11-1570. Retirement and annuity fund.

(a) The District of Columbia Judicial Retirement and Survivors Annuity Fund is hereby continued in the Treasury and appropriated for the payment of retirement salaries, annuities, refunds, and allowances as provided in this subchapter until such time as all amounts in such Fund have been expended or transferred to the District of Columbia Judges' Retirement Fund established by section 1-1814(a) [1-714(a)]. Thereafter the retirement salaries, annuities, refunds, and allowances provided for in this subchapter shall be paid from such Fund.

(b) The Secretary shall invest, from time to time, in interest-bearing securities of the United States or Federal farm loan bonds, any portions of the District of Columbia Judicial Retirement and Survivors Annuity Fund as in his judgment may not be immediately required for payments under the first sentence of subsection (a) and income derived from such investments shall constitute a part of the District of Columbia Judicial Retirement and Survivors Annuity Fund.

(c) All amounts deposited by, or deducted and withheld from the salary of, any judge for credit to the fund shall, under regulations prescribed by the Commissioner [Mayor], be credited to an individual account of the judge.

(d) None of the moneys mentioned in this subchapter (including moneys in the District of Columbia Judges' Retirement Fund) shall be assignable, either in law or in equity, or be subject to execution, levy, attachment, garnishment, or other legal process. (July 29, 1970, 84 Stat. 507, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1570; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 124(b)(4).)

Section references. — This section is referred to in § 11-1568.1.

References in text. — At the end of the first sentence of subsection (a) of this section, "1-714" was inserted, in brackets, to reflect the renumbering of section 1-1814 in the 1981 Edition of the D.C. Code.

Change in government. — This section originated at a time when local government powers were delegated to the District of Colum-

bia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly,

and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1571. Periodic increases; existing rights.

(a) The retirement salary of any judge, or the annuity of any person based upon the service of a judge, who, on the effective date of any increase which, after the effective date of this section, becomes payable under the provisions of section 8340 (b) of title 5, United States Code, is receiving such salary or annuity, or who, before the next such increase first becomes payable under such section, receives such salary or annuity, either (1) under the provisions of this subchapter, or (2) under the provisions of section 11-1701, as in effect prior to the effective date of this section, and its predecessor laws, shall be increased on the effective date of the increase by a percentage equal to the percentage of such increase under section 8340 of title 5, United States Code.

(b) Nothing in this subchapter shall defeat or diminish rights acquired under section 11-1701, as in effect prior to the effective date of this section, and its predecessor laws, except on the election and with the consent of the judge, annuitant, or other person affected. (July 29, 1970, 84 Stat. 507, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1571; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 252(a).)

Section references. — This section is referred to in § 11-1568.

CHAPTER 17. ADMINISTRATION OF DISTRICT OF COLUMBIA COURTS.

Subchapter I. Court Administration.

Sec.

- 11-1701. Administration of District of Columbia court system.
- 11-1702. Responsibilities of chief judges in the respective courts.
- 11-1703. Executive Officer of the District of Columbia courts; appointment; compensation.
- 11-1704. Oath and bond of the Executive Officer.

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- 11-1721. Clerks of courts.
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- 11-1727. Court reporters.
- 11-1728. Recruitment and training of personnel.
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- 11-1741. Court operations and organization.
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- 11-1747. Delegation of authority.

Subchapter I. Court Administration.

§ 11-1701. Administration of District of Columbia court system.

(a) There shall be a Joint Committee on Judicial Administration in the District of Columbia (hereafter in this chapter referred to as the "Joint Committee") consisting of (1) the Chief Judge of the District of Columbia Court of Appeals, who shall serve as Chair, (2) an associate judge of that court elected annually by the judges thereof, (3) the Chief Judge of the Superior Court, and (4) two associate judges of that court elected annually by the judges thereof.

(b) The Joint Committee shall have responsibility within the District of Columbia court system for the following matters:

(1) General personnel policies, including those for recruitment, removal, compensation, and training.

(2) Accounts and auditing.

(3) Procurement and disbursement.

(4) Submission of the annual budget requests of the District of Columbia Court of Appeals and the Superior Court to the Commissioner [Mayor] of the District of Columbia as the integrated budget of the District of Columbia court system, except that such requests may be modified upon the concurrence of four of the five members of the Joint Committee.

(5) Approval of the bonds of fiduciary employees within the District of Columbia court system.

(6) Formulation and enforcement of standards for outside activities of and receipt of compensation by the judges of the District of Columbia court system.

(7) Development and coordination of statistical and management information systems and reports supporting the annual report of the District of Columbia court system.

(8) Liaison between the District of Columbia court system and the court systems of other jurisdictions, including the Judicial Conference of the United States, the Judicial Conference of the District of Columbia Circuit, and the Federal Judicial Center.

(9) With the concurrence of the respective chief judges of the District of Columbia courts, other policies and practices of the District of Columbia court system and resolution of other matters which may be of joint and mutual concern of the District of Columbia Court of Appeals and the Superior Court.

(c) The Joint Committee, with the assistance of the Executive Officer of the District of Columbia courts, shall —

(1) consider and evaluate the business of the courts and means of improving the administration of justice within the District of Columbia court system and shall report thereon in its annual report;

(2) prepare and publish an annual report of the District of Columbia court system regarding the work of the courts, the performance of the duties enumerated in this chapter, and of any recommendations relating to the courts;

(3) recommended from time to time to the Congress changes in the organization, jurisdiction, operation, and procedures of the courts which are appropriate for legislative action, and institute such changes, pursuant to the responsibilities enumerated in subsection (b), in the methods of administering judicial business in the court system as would improve the administration of justice; and

(4) arrange for such training seminars, and other related services, as are desirable and feasible for judges and other court personnel, including services from the Federal Judicial Center on a reimbursable basis.

(d) The Joint Committee shall have authority to issue all orders and directives necessary to implement the responsibilities and duties enumerated in this section. (July 29, 1970, 84 Stat. 508, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1701; June 13, 1994, Pub. L. 103-266, § 1(b)(80), 108 Stat. 713.)

Section references. — This section is referred to in §§ 11-1571, 11-1702, and 11-1703.

Effect of amendments. — Public Law 103-266 amended (a) to remove gender-specific references.

Termination of Federal Disclosure Requirements. — See Pub. L. 99-573, § 6.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in ter-

minology were made, in brackets, in this section.

Intent of section. — This section was intended to permit the Executive Officer to exercise day-to-day control over nonjudicial personnel, while authorizing, but not mandating, the Joint Committee or the chief judges to review the Executive Officer's appointments and terminations. *Romansky v. Polansky*, App. D.C., 466 A.2d 1253 (1983).

Federal court to abstain from intrusion into management of court system. — Complaint by court reporters of Superior Court presents problems capable of resolution through administrative processes of that Court or available grievance procedures and it is appropriate to apply abstention doctrine so as to avoid needless conflict and intrusion into management of daily and routine affairs of Superior Court. *Association of Court Reporters of Superior Court v. Superior Court*, 424 F. Supp. 90 (D.D.C. 1976).

Cited in Mundy v. Weinberger, 554 F. Supp. 811 (D.D.C. 1982); Romansky v. Polansky, 110 WLR 2560 (Super. Ct. 1982).

§ 11-1702. Responsibilities of chief judges in the respective courts.

(a) The Chief Judge of the District of Columbia Court of Appeals, in addition to the authority conferred on the Chief Judge by chapter 7 of this title, shall supervise the internal administration of that court —

(1) including all administrative matters other than those within the responsibility enumerated in section 11-1701(b), and

(2) including the implementation in that court of the matters enumerated in section 11-1701(b), consistent with the general policies and directives of the Joint Committee.

(b) The Chief Judge of the Superior Court, in addition to the authority conferred on the Chief Judge by chapter 9 of this title, shall supervise the internal administration of that court —

(1) including all administrative matters other than those within the responsibility enumerated in section 11-1701(b), and

(2) including the implementation in that court of the matters enumerated in section 11-1701(b), consistent with the general policies and directives of the Joint Committee. (July 29, 1970, 84 Stat. 509, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1702; June 13, 1994, Pub. L. 103-266, § 1(b)(81), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

Intent of section. — This section was intended to permit the Executive Officer to exercise day-to-day control over nonjudicial person-

nel, while authorizing, but not mandating, the Joint Committee or the chief judges to review the Executive Officer's appointments and terminations. Romansky v. Polansky, App. D.C., 466 A.2d 1253 (1983).

§ 11-1703. Executive Officer of the District of Columbia courts; appointment; compensation.

(a) There shall be an Executive Officer of the District of Columbia courts (hereafter in this chapter referred to as the “Executive Officer”). The Executive Officer shall be responsible for the administration of the District of Columbia court system subject to the supervision of the Joint Committee and the chief judges of the respective courts as provided in this chapter. The Executive Officer shall be subject to the supervision of the Joint Committee regarding administrative matters that are enumerated in section 11-1701(b). The Executive Officer shall be subject to the supervision of the chief judges in their respective courts: (1) regarding all administrative matters other than those within the responsibility enumerated in section 11-1701(b), and (2) regarding the implementation in the respective courts of the matters enumerated in section 11-1701(b), consistent with the general policies and directives of the Joint Committee.

(b) The Executive Officer shall be appointed, and subject to removal, by the Joint Committee on Judicial Administration with the approval of the chief judges of the District of Columbia Courts. In making such appointment the Joint Committee shall consider experience and special training in administrative and executive positions and familiarity with court procedures.

(c) The Executive Officer shall be a bona fide resident of the District of Columbia or become a resident not more than 180 days after the date of appointment except that the Executive Officer in office at the effective date of this Act shall not be required to be or to become a resident of the District of Columbia.

(d) The Executive Officer shall receive the same compensation, including retirement benefits, as an associate judge of the Superior Court. (July 29, 1970, 84 Stat. 510, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1703; Oct. 30, 1984, 98 Stat. 3142, Pub. L. 98-598, § 3; Oct. 28, 1986, 100 Stat. 3328, Pub. L. 99-573, § 3; June 13, 1994, Pub. L. 103-266, § 1(b)(82), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (a) to remove gender-specific references.

References in text. — “The effective date of this Act,” referred to in subsection (c), is October 28, 1986.

Intent of section. — This section was intended to permit the Executive Officer to exer-

cise day-to-day control over nonjudicial personnel, while authorizing, but not mandating, the Joint Committee or the chief judges to review the Executive Officer's appointments and terminations. *Romansky v. Polansky*, App. D.C., 466 A.2d 1253 (1983).

§ 11-1704. Oath and bond of the Executive Officer.

(a) The Executive Officer shall take an oath or affirmation for the faithful and impartial discharge of the duties of that office.

(b) The Executive Officer shall give bond, with two or more sureties, to be approved by the Joint Committee, in an amount prescribed by the Joint Committee, faithfully to discharge the duties of that office. (July 29, 1970, 84 Stat. 510, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1704; June 13, 1994, Pub. L. 103-266, § 1(b)(83), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

Subchapter II. Court Personnel.

§ 11-1721. Clerks of courts.

The District of Columbia Court of Appeals and the Superior Court shall each have a clerk who shall perform such duties as may be assigned to the clerk. (July 29, 1970, 84 Stat. 510, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1721; June 13, 1994, Pub. L. 103-266, § 1(b)(84), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

§ 11-1722. Director of Social Services.

(a) There shall be a Director of Social Services in the Superior Court who shall have charge of all social services for the Superior Court, subject to the supervision of the Executive Officer. With respect to adults, the Director shall provide probation services, intake procedures, marital and family counseling, social casework, rehabilitation and training programs, and such other services as the court shall prescribe. With respect to juveniles, the Director shall provide intake procedures, counseling, education and training programs, probation services, and such other services as the court shall prescribe.

(b) To the maximum extent feasible, the Director shall coordinate with and utilize the services of appropriate public and private agencies within the District of Columbia, and shall coordinate and provide administrative services to volunteers utilized by the Superior Court or any divisions thereof.

(c) As directed by the Executive Officer, the Director shall conduct studies and make reports relating to the utilization of social services as an adjunct to the Superior Court.

(d) The Director shall make recommendations with respect to the consolidation or disposition of causes before the court relating to members of the same family or household. (July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1722; June 13, 1994, Pub. L. 103-266, § 1(b)(85), 108 Stat. 713.)

Section references. — This section is referred to in § 16-2337.

Cited in *In re X.B.*, App. D.C., 637 A.2d 1144 (1994).

Effect of amendments. — Public Law 103-266 amended (a) to remove gender-specific references.

§ 11-1723. Fiscal Officer.

(a)(1) There shall be a Fiscal Officer in the District of Columbia court system who shall be responsible for the budget of the court system and for the accounts of the courts, subject to the supervision of the Executive Officer.

(2) The Fiscal Officer shall receive, safeguard, and account for all fees, costs, payments, and deposits of money or other items, and shall be responsible for depositing in the Treasury of the United States all fines, forfeitures, fees, unclaimed deposits, and other moneys.

(3) The Fiscal Officer shall be responsible for the approval of vouchers and the internal auditing of the accounts of the courts and shall arrange for an annual independent audit of the accounts of the courts by the District of Columbia government.

(b) The Fiscal Officer shall give bond with two or more sureties, to be approved by the Joint Committee, in an amount prescribed by the Joint Committee, faithfully to discharge the duties of that office. (July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1723; June 13, 1994, Pub. L. 103-266, § 1(b)(86), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (b) to remove gender-specific references.

§ 11-1724. Auditor-Master.

There shall be an Auditor-Master of the Superior Court who shall (1) execute orders of reference referred by the Superior Court and perform duties in connection with the execution of such orders in accordance with Rule 53 of the Federal Rules of Civil Procedure or other applicable rule, and (2) perform such other functions as may be assigned by the Superior Court. The Auditor-Master shall give bond faithfully to discharge the duties of that office. The bond shall have two or more sureties to be approved by the chief judge of the Superior Court, and shall be in an amount prescribed by the chief judge. (July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1724; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 5(a); June 13, 1994, Pub. L. 103-266, § 1(b)(87), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended the second and third sentences to remove gender-specific references.

Requirement that Auditor-Master's report conform to order of reference should be read in flexible manner to further the goal of advising the court and jury on complicated factual issues and simplifying the task of understanding the evidence. *House of Wines, Inc. v. Sumter*, App. D.C., 510 A.2d 492 (1986).

Review of Auditor-Master's decision of

question of law. — If an Auditor-Master decides a question of law in order to perform his primary duty of finding facts, and his conclusion is a correct statement of law, the findings will not be disturbed on appeal. *House of Wines, Inc. v. Sumter*, App. D.C., 510 A.2d 492 (1986).

Admission of Auditor-Master's summary of testimony into evidence held harmless error. — See *House of Wines, Inc. v. Sumter*, App. D.C., 510 A.2d 492 (1986).

§ 11-1725. Appointment of nonjudicial personnel.

(a) Subject to the approval of the Joint Committee, the Executive Officer shall appoint, and may remove, the Fiscal Officer, and such other personnel whose principal function is to perform duties for both District of Columbia courts.

(b) The Executive Officer shall appoint, and may remove, the Director of Social Services, the clerks of the courts, the Auditor-Master, and all other nonjudicial personnel for the courts (other than the Register of Wills and personal law clerks and secretaries of the judges) as may be necessary, subject to —

(1) regulations approved by the Joint Committee; and

(2) the approval of the chief judge of the court to which the personnel are or will be assigned.

Appointments and removals of court personnel shall not be subject to the laws, rules, and limitations applicable to District of Columbia employees, except as otherwise specified in the District of Columbia Court Reorganization Act of 1970. (July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1725.)

Intent of section. — This section was intended to permit the Executive Officer to exercise day-to-day control over nonjudicial personnel, while authorizing, but not mandating, the Joint Committee or the chief judges to review

the Executive Officer's appointments and terminations. *Romansky v. Polansky*, App. D.C., 466 A.2d 1253 (1983).

Construction of section. — This section should be construed as allocating discretionary

authority to, not as imposing duties upon, the Joint Committee and the chief judges. *Romansky v. Polansky*, App. D.C., 466 A.2d 1253 (1983).

Power of Joint Committee to delegate

its oversight authority to Executive Officer is neither expressly nor implicitly withheld under the Court Reorganization Act. *Romansky v. Polansky*, 110 WLR 2560 (Super. Ct. 1982).

§ 11-1726. Compensation.

In the case of nonjudicial employees of the District of Columbia courts whose compensation is not otherwise fixed by this title, the Executive Officer shall fix the rates of compensation of such employees without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, and such rates shall not exceed the maximum rate prescribed for GS-15 of the General Schedule, except that the Executive Officer may fix the rates of compensation of —

(1) 5 positions at not to exceed the maximum rate prescribed for GS-16 of the General Schedule; and

(2) 2 positions at not to exceed the maximum rate prescribed for GS-17. In fixing the rates of nonjudicial employees under this section, the Executive Officer shall be guided by the rates of compensation fixed for other employees in the executive and judicial branches of the Federal and District of Columbia Governments occupying the same or similar positions or occupying positions of similar responsibility, duty, and difficulty. (July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1726.)

References in text. — The General Schedule, referred to throughout this section, is set out in 5 U.S.C. § 5332.

Overtime pay provisions of the Fair Labor Standards Act are not applicable to court reporters of the Superior Court. *Association of Court Reporters of Superior Court v. Superior Court*, 424 F. Supp. 90 (D.D.C. 1976).

Pay raise factors considered. — This section does not exclude consideration of all possible pay raise factors other than federal and District employee salary increases. *Concerned Court Employees v. Polansky*, App. D.C., 478 A.2d 1096 (1984).

§ 11-1727. Court reporters.

(a) The Executive Officer shall appoint reporters who shall be full-time employees of the courts. When necessary, the Executive Officer may contract for additional temporary reporting services. Nothing in this section shall be construed to preclude the Superior Court of the District of Columbia from providing by rule for the sound recording of proceedings in lieu of mechanical (audio or manual) transcription in any branch, division or courtroom of the court. Court reporters, shall, in addition to being subject to the general supervision of the Executive Officer, be subject to the supervision of the chief judges of the courts and of the other District of Columbia judges for whom they perform services, regarding the performance of their duties in the respective courts.

(b) In addition to their annual salaries, court reporters may charge and collect from parties, including the United States and the District of Columbia, who request transcripts of the original records of proceedings, only such fees as may be prescribed from time to time by the Executive Officer. The reporters shall furnish all supplies at their own expense. The Executive Officer shall

prescribe such rules, practice, and procedure pertaining to fees for transcripts as the Executive Officer deems necessary, conforming as nearly as practicable to the rules, practice, and procedure established for the United States District Court for the District of Columbia. A fee may not be charged or taxed for a copy of a transcript delivered to a judge at the judge's request or for copies of a transcript delivered to the clerk of a court for the records of the court. Except as to transcripts that are to be paid for by the United States or the District of Columbia, the reporters may require a party requesting a transcript to prepay the estimated fee therefor in advance of delivery of the transcript. (July 29, 1970, 84 Stat. 512, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1727; June 13, 1994, Pub. L. 103-266, § 1(b)(88), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (b) to remove gender-specific references.

Overtime pay provisions of the Fair Labor Standards Act are not applicable to court reporters of the Superior Court. *Association of Court Reporters of Superior Court v. Superior Court*, 424 F. Supp. 90 (D.D.C. 1976).

Complaints capable of resolution through administrative processes. — A complaint by the court reporters of the Superior

Court presents problems capable of resolution through the administrative processes of that Court or available grievance procedures, and it is appropriate to apply the abstention doctrine so as to avoid needless conflict and intrusion into management of daily and routine affairs of Superior Court. *Association of Court Reporters of Superior Court v. Superior Court*, 424 F. Supp. 90 (D.D.C. 1976).

Cited in *Cole v. United States*, App. D.C., 478 A.2d 277 (1984).

§ 11-1728. Recruitment and training of personnel.

The Executive Officer shall be responsible for recruiting such qualified personnel as may be necessary for the District of Columbia courts and for providing in-service training for court personnel. (July 29, 1970, 84 Stat. 512, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1728.)

§ 11-1729. Service of United States marshal.

The United States Marshal for the District of Columbia shall continue to serve the courts of the District of Columbia, subject to the supervision of the Attorney General of the United States. (July 29, 1970, 84 Stat. 512, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1729.)

Cited in *United States v. Hanna*, 114 WLR 1153 (Super. Ct. 1986).

§ 11-1730. Reports of court personnel.

(a) Judges of the courts shall furnish time and attendance records pursuant to sections 11-709 and 11-909 to the respective chief judges, with a copy to the Executive Officer.

(b) All nonjudicial personnel of the courts shall furnish such reports and information to the Executive Officer as the Executive Officer shall request. (July 29, 1970, 84 Stat. 512, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1730; June 13, 1994, Pub. L. 103-266, § 1(b)(89), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (b) to remove gender-specific references.

§ 11-1731. Reports of other personnel.

The Executive Officer or the chief judge may request such reports as may be necessary to the efficient administration of the courts from —

- (1) the United States Attorney for the District of Columbia,
- (2) the Corporation Counsel,
- (3) the United States Marshal for the District of Columbia,
- (4) the Commissioner [Mayor] of the District of Columbia,
- (5) the superintendent of any hospitals or institutions to which persons have been committed by the Superior Court,
- (6) the District of Columbia Public Defender Service,
- (7) the District of Columbia Bail Agency [District of Columbia Pre-trial Services Agency],
- (8) the District of Columbia Department of Corrections,
- (9) the Chief of the Metropolitan Police Department,
- (10) the District of Columbia Department of Public Health [Department of Human Services], and
- (11) the District of Columbia Department of Public Welfare [Department of Human Services].

These officials, agencies, and departments shall furnish such reports and information as may be requested pursuant to this section. (July 29, 1970, 84 Stat. 513, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1731.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

District of Columbia Bail Agency abolished. — The District of Columbia Bail Agency was abolished and replaced by the District of Columbia Pre-trial Services Agency by the Act of September 27, 1978, Pub. L. 95-388.

Health Department abolished. — The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of

1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D. C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commis-

sioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

Board of Public Welfare abolished. — The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established under the direction and control of a Commissioner, a Department of Public Welfare, headed

by a Director with the purpose of planning, implementing and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former board to the Department of Public Health and the Department of Public Welfare. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 11-1732. Hearing commissioners.

(a) With the approval of a majority of the judges of the Superior Court of the District of Columbia in active service and subject to standards and procedures established by the rules of the Superior Court, the chief judge of the Superior Court may appoint hearing commissioners, who shall serve in the Superior Court and perform the duties enumerated in subsection (j) of this section and such other functions incidental to these duties as are consistent with the rules of the Superior Court and the Constitution and laws of the United States and of the District of Columbia.

(b) Hearing commissioners shall be selected pursuant to standards and procedures adopted by the Board of Judges. Such procedures shall contain provisions for public notice of all vacancies in hearing commissioner positions and for the establishment by the Court of an advisory merit selection panel, composed of lawyer and nonlawyer residents of the District of Columbia who are not employees of the District of Columbia Courts, to assist the Board of Judges in identifying and recommending persons who are best qualified to fill such positions.

(c) No individual shall be appointed as a hearing commissioner unless that individual —

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding the appointment or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or District government; and

(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to appointment, and retains such residency during service as a hearing commissioner, except that hearing commissioners appointed prior to the effective date of this section shall not be required to be residents of the District

to be eligible to be appointed to one of the initial terms under this section or to be reappointed.

(d) Hearing commissioners shall be appointed for terms of four years and may be reappointed for terms of four years. Those individuals serving as hearing commissioners on the effective date of this Act shall be automatically appointed for a four year term.

(e) Upon the expiration of a hearing commissioner's term, the hearing commissioner may continue to perform the duties of office until a successor is appointed, or for 90 days after the date of the expiration of the hearing commissioner's term, whichever is earlier.

(f) No individual may serve as a hearing commissioner under this section after having attained the age of seventy-four.

(g) The Board of Judges may suspend, involuntarily retire, or remove a hearing commissioner, during the term for which the hearing commissioner is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability. Suspension, involuntary retirement, or removal requires the concurrence of a majority of the judges in active service. Before any order of suspension, involuntary retirement, or removal shall be entered, a full specification of the charges and the opportunity to be heard shall be furnished to the hearing commissioner pursuant to procedures established by rules of the Superior Court.

(h) If the Board of Judges determines that a hearing commissioner position is not needed, the Board of Judges may terminate the position.

(i)(1) Hearing commissioners may not engage in the practice of law, or in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as officers of the court.

(2) Hearing commissioners shall abide by the Canons of Judicial Ethics.

(j) A hearing commissioner, when specifically designated by the chief judge of the Superior Court, and subject to the rules of the Superior Court and the right of review under subsection (k), may perform the following functions:

(1) Administer oaths and affirmations and take acknowledgements;

(2) Determine conditions of release pursuant to the provisions of title 23 of the District of Columbia Code (relating to criminal procedure);

(3) Conduct preliminary examinations and initial probation revocation hearings in all criminal cases to determine if there is probable cause to believe that an offense has been committed and that the accused committed it;

(4)(A) In any case brought under § 11-1101(1), (3), (10), or (11) of the District of Columbia Code involving the establishment or enforcement of child support, or in any case seeking to modify an existing child support order, where a hearing commissioner in the Family Division of the Superior Court finds that there is an existing duty of support, the hearing commissioner shall conduct a hearing on support, make findings, and enter judgment as provided by law, and in accordance with guidelines established by rule of the Superior Court, which judgment shall constitute a final order of the Superior Court.

(B) If in a case under paragraphs [paragraph] (A), the hearing commissioner finds that a duty of support exists and makes a finding that the case involves complex issues requiring judicial resolution, the hearing commis-

sioner shall establish a temporary support obligation and refer unresolved issues to a judge of the Superior Court.

(C) In cases under subparagraphs (A) and (B) in which the hearing commissioner finds that there is a duty of support and the individual owing that duty has been served or given notice of the proceeding under any applicable statute or court rule, if that individual fails to appear or otherwise respond, the hearing commissioner shall enter a default order, which shall constitute a final order of the Superior Court;

(5) Subject to the rules of the Superior Court and with the consent of the parties involved, make findings and enter final orders or judgments in other uncontested or contested proceedings, in the Civil, Criminal, and Family Divisions of the Superior Court, excluding jury trials and trials of felony cases.

(k) With respect to proceedings and hearings under paragraphs (2), (3), (4), and (5) of subsection (j), a review of the hearing commissioner's order or judgment, in whole or in part, may be made by a judge of the appropriate division sua sponte and must be made upon a motion of one of the parties made pursuant to procedures established by rules of the Superior Court. The reviewing judge shall conduct such proceedings as required by the rules of the Superior Court. An appeal to the District of Columbia Court of Appeals may be made only after a judge of the Superior Court has reviewed the order or judgment.

(l) The Superior Court shall ensure that all hearing commissioners receive training to enable them to fulfill their responsibilities.

(m)(1) The chief judge of the Superior Court, in consultation with the District of Columbia Bar, the City Council of the District of Columbia, and other interested parties, shall within one year of the effective date of this section, make a careful study of conditions in the Superior Court to determine —

(A) the number of appointments required to provide for the effective administration of justice;

(B) the divisions in which hearing commissioners shall serve;

(C) the appropriate functions of hearing commissioners; and

(D) the compensation of, and other personnel matters pertaining to, hearing commissioners.

Upon completion of the study, the chief judge shall report the findings of such study to the appropriate committees of the Congress.

(2) After the study required by paragraph (1), the chief judge shall, from time to time, make such studies as the Board of Judges shall deem expedient, giving consideration to suggestions of the District of Columbia Bar and other interested parties.

(n) With the concurrence of the District of Columbia Court of Appeals, the Board of Judges of the Superior Court may promulgate rules, not inconsistent with the terms of this section, which are necessary for the fair and effective utilization of hearing commissioners in the Superior Court.

(o) For purposes of this section, the term "Board of Judges" means the judges of the Superior Court of the District of Columbia. Any action of the Board of Judges shall require a majority vote of the sitting judges. (Sept. 10,

1982, 96 Stat. 818, Pub. L. 97-257; July 29, 1983, 97 Stat. 301, Pub. L. 98-63, § 2; Oct. 12, 1984, 98 Stat. 1837, Pub. L. 98-473, § 101(b); Dec. 19, 1985, 99 Stat. 1224, Pub. L. 99-190, § 101(c); Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 2(a).)

References in text. — “The effective date of this section,” referred to in subsection (c)(3), is October 28, 1986. “The effective date of this Act,” referred to in subsection (d), is October 28, 1986. “The effective date of this section,” referred to in the introductory language of subsection (m)(1), is October 28, 1986.

Editor’s notes. — In subsection (j)(4)(B) the bracketed word is set out to correct an error in Pub. Law 99-573.

Powers. — A Superior Court hearing commissioner is empowered to enter final orders or judgments in certain nonjury criminal matters, which are not final for purposes of review in the Court of Appeals, until after a judge of the Superior Court has reviewed the order or judgment. *Bratcher v. United States*, App. D.C., 604 A.2d 858 (1992).

Proceedings in Small Claims and Conciliation Branch. — Jurisdiction of properly designated hearing commissioners encompassed proceedings in the Small Claims and Conciliation Branch. *Canada v. Management Partnership, Inc.*, App. D.C., 618 A.2d 715 (1993).

Child support guidelines. — The Child Support Guideline was lawfully adopted. *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989).

Subsection (j)(4)(A) constitutes a specific delegation of authority to the Superior Court to adopt a rule setting forth guidelines. As such, it would prevail over the general jurisdictional provision of § 11-946. *District of Columbia ex rel. K.K. v. W.C.R.*, 117 WLR 1373 (Super. Ct. 1989).

A commissioner’s opinion such as a belief that the guideline is not supported by adequate economic data does not relieve him from his duty to apply it. *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989).

Subsection (j)(4)(A) of this section and the identical provision in Super. Ct. Gen. Fam. R. D. make it abundantly clear that Superior Court hearing commissioners have no choice regarding whether to utilize the Child Support Guidelines in ruling on motions to modify child support orders. Application of the Guideline by the commissioners is mandatory. *Garland v. Cobb*, 117 WLR 1365 (Super. Ct. 1989).

Child Support Guideline adopted by Superior Court Board of Judges changed substantive law and was invalid. *Fitzgerald v. Fitzgerald*, App. D.C., 566 A.2d 719 (1989).

The Superior Court Board of Judges had the authority to adopt the Child Support Guideline

as a rebuttable presumption in the form of a rule of court so long as judges and hearing commissioners continue to exercise their discretion to achieve equitable results consistent with existing case law. *Fitzgerald v. Fitzgerald*, App. D.C., 566 A.2d 719 (1989).

Although this section is silent on whether the Child Support Guideline would be binding on Superior Court judges in reviewing hearing commissioners’ orders, it is consistent with the statutory scheme that Superior Court judges would use the same criteria as hearing commissioners since subparagraph (j)(4)(A) provides that hearing commissioners’ orders are to constitute final orders of the Superior Court. *Fitzgerald v. Fitzgerald*, App. D.C., 566 A.2d 719 (1989).

Trial court’s review is prerequisite to its approval and adoption of commissioner’s findings where objections are raised. *Kwakye v. District of Columbia*, App. D.C., 494 A.2d 643 (1985).

And record is necessary for trial court review. — Party objecting to a commissioner’s recommended findings must present an adequate record to the trial court for review. *Kwakye v. District of Columbia*, App. D.C., 494 A.2d 643 (1985).

Ruling on motion to dismiss criminal information not final until adopted by trial court. — Hearing commissioner’s ruling on a motion to dismiss criminal information does not become a final order until a trial court judge approves and adopts it. *District of Columbia v. Eck*, App. D.C., 476 A.2d 687 (1984).

Appellate review. — Absent extraordinary circumstances, if an issue is not presented to the trial court for its considered review, the issue will not be preserved for appeal. *Dorm v. United States*, App. D.C., 559 A.2d 1317 (1989).

Appellate review of any hearing commissioner’s ruling must be sought first in the Superior Court, or conducted sua sponte by a Superior Court judge. Only after such review may an appeal be noted to the Court of Appeals; and that appeal is taken not from the commissioner’s ruling but from the Superior Court judge’s final order or judgment. *Arlt v. United States*, App. D.C., 562 A.2d 633 (1989).

Cited in *District of Columbia ex rel. K.K. v. W.C.R.*, 116 WLR 2197 (Super. Ct. 1988); *Speight v. United States*, App. D.C., 558 A.2d 357 (1989); *L.A.W. v. M.E.*, App. D.C., 606 A.2d 160 (1992); *Sims v. District of Columbia*, App. D.C., 612 A.2d 215 (1992).

*Subchapter III. Duties and Responsibilities.***§ 11-1741. Court operations and organization.**

Within the respective District of Columbia courts, and subject to the supervision of the chief judges thereof, the Executive Officer shall —

(1) supervise, analyze, and improve case assignments, calendars, and dockets;

(2) provide improved services and introduce new methods to better utilize the time of and accommodate government and other witnesses;

(3) supervise, analyze, and improve the management of jurors;

(4) recommend changes and improvements in court rules and procedures affecting the Executive Officer's administrative responsibilities;

(5) report periodically to the appropriate chief judge with respect to case volumes, backlogs, length of time cases have been pending, number and identity of incarcerated defendants awaiting trial, and such other information as the respective chief judges may request;

(6) mechanize and computerize court operations and services where feasible and desirable and carry on continuing studies and evaluations of increased and innovative uses of mechanization and computerization;

(7) conduct studies and research with respect to court operations on the Executive Officer's own initiative or on request of the respective chief judges;

(8) make recommendations to the chief judge of the Superior Court relating to the arrangement and division of the business of that court and the fixing of the time of sessions of the various divisions and branches of that court; and

(9) perform such other duties as may be assigned to the Executive Officer by a chief judge. (July 29, 1970, 84 Stat. 513, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1741; June 13, 1994, Pub. L. 103-266, §§ 1(b)(90), (91), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (4), (7), and (9) to remove gender-specific references.

§ 11-1742. Property and disbursement.

(a) The Executive Officer shall be responsible, subject to the supervision of the Joint Committee, for the management of such buildings and space as may be assigned to the courts and shall maintain liaison with the appropriate Federal and District of Columbia officials with respect thereto.

(b) The Executive Officer shall be responsible for the procurement of necessary equipment, supplies, and services for the courts and shall have power, subject to applicable law, to reimburse the District of Columbia government for services provided and to contract for such equipment, supplies, and services as may be necessary.

(c) The Executive Officer shall serve as disbursing officer and payroll officer of the District of Columbia courts and shall assign and distribute necessary equipment and supplies. (July 29, 1970, 84 Stat. 513, Pub. L. 91-358, title I,

§ 111; Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, § 2(a)(7); 1973 Ed., § 11-1742.)

§ 11-1743. Annual budget.

(a) The Joint Committee shall prepare and submit to the Commissioner [Mayor] of the District of Columbia annual estimates of the expenditures and appropriations necessary for the maintenance and operations of the District of Columbia court system.

(b) All such estimates shall be forwarded to the Bureau of the Budget [Office of Management and Budget] by the District of Columbia without revision, but subject to the recommendations of the District of Columbia. Similarly, all estimates shall be included in the budget without revision by the President but subject to the President's recommendations. (July 29, 1970, 84 Stat. 514, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1743; June 13, 1994, Pub. L. 103-266, § 1(b)(92), 108 Stat. 713.)

Cross references. — As to preparation and submission of budget for furnishing representation to indigents in criminal cases, see § 11-2607.

As to provisions of District Charter relating to budget of District of Columbia courts, see § 445 of Appendix to this title.

Section references. — This section is referred to in § 11-2607.

Effect of amendments. — Public Law 103-266 amended (b) to remove gender-specific references.

References in text. — The Bureau of the Budget, referred to in the first sentence of subsection (b), was replaced by the Office of Management and Budget by § 102(a) of Reorganization Plan No. 2 of 1970, 84 Stat. 2085.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1744. Information and liaison services.

The Executive Officer shall be responsible for —

(1) collecting and compiling statistical information with respect to the volume and disposition of the work of the courts and the personnel of the courts;

(2) printing and the distribution of court rules;

(3) keeping the courts advised of pending legislative and executive actions relating to the courts;

(4) serving as the public information officer of the courts; and

(5) performing such other duties as may be assigned to the Executive Officer by the Joint Committee and the chief judges in their respective courts. (July 29, 1970, 84 Stat. 514, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1744; June 13, 1994, Pub. L. 103-266, § 1(b)(93), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (5) to remove gender-specific references.

§ 11-1745. Reports and records.

(a) The Executive Officer shall prepare and publish, subject to the approval of the Joint Committee, the annual report of the District of Columbia court system of the work of the courts and their operations during the preceding year together with any recommendations relating to the courts. The principal purpose of the annual report shall be to provide meaningful and objective information concerning the performance, progress, and problems of the District of Columbia courts. The report shall include narrative comments analyzing the significance of statistical data and shall show trends with regard to the work of such courts, current data on the age and type of pending cases, and methods of disposition of cases. Nothing in this chapter shall prevent the respective chief judges from preparing and publishing any other reports as they may wish.

(b) The Executive Officer shall be responsible for maintaining and safeguarding the records of the courts. Except for those records required by law to be kept under court seal, the Executive Officer shall make the records available at all reasonable times to —

- (1) the United States Department of Justice,
- (2) the Mayor of the District of Columbia,
- (3) the District of Columbia Commission on Judicial Disabilities and Tenure, and
- (4) such other agencies as the Joint Committee may specify. (July 29, 1970, 84 Stat. 514, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1745; June 13, 1994, Pub. L. 103-266, § 1(b)(94), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended the introductory language of (b) to remove gender-specific references; and substituted “Mayor” for “Commissioner” in (b)(2).

§ 11-1746. Certification of copies of papers or documents filed in District of Columbia courts.

The Executive Officer shall provide that, if any person filing any paper or document in a District of Columbia court requests a certification of such filing, a copy of such paper or document provided by such person shall be appropriately marked for such person to show the time and date of such filing and the identity of the individual with whom such paper or document was filed. Such certified copy shall be prima facie evidence in any proceeding that the original of such paper or document was filed as shown by the certification. (July 29, 1970, 84 Stat. 515, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1746.)

§ 11-1747. Delegation of authority.

The Executive Officer and court officers appointed by the Executive Officer may delegate to their subordinates authority and responsibility to perform the functions vested in them by law. (July 29, 1970, 84 Stat. 515, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1747; June 13, 1994, Pub. L. 103-266, § 1(b)(95), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

CHAPTER 19. JURIES AND JURORS.

Sec.	Sec.
11-1901. Declaration of policy.	11-1911. Length of service.
11-1902. Definitions.	11-1912. Juror fees.
11-1903. Prohibition of discrimination.	11-1913. Protection of employment of jurors.
11-1904. Jury system plan.	11-1914. Preservation of records.
11-1905. Master juror list.	11-1915. Fraud in the selection process.
11-1906. Qualification of jurors.	11-1916. Grand jury; additional grand jury.
11-1907. Summoning of prospective jurors.	11-1917. Coordination and cooperation of courts.
11-1908. Exclusion from jury service.	11-1918. Effect of invalidity.
11-1909. Deferral from jury service.	
11-1910. Challenging compliance with selection procedures.	

Revision of chapter. — Pub. L. 99-650 revised this chapter effective 180 days from November 14, 1986. The revision retained subject matter, with amendments, set out in former §§ 11-1901, 11-1903, 11-1905 and 11-1906 in present §§ 11-1906, 11-1911, 11-1912, and

11-1916. No detailed explanation of the change made by the 1986 Act has been attempted, but, where appropriate, historical citations to the former sections have been added to corresponding sections in the revised chapter.

§ 11-1901. Declaration of policy.

A jury selection system is hereby established for the Superior Court of the District of Columbia. All litigants entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the residents of the District of Columbia. In accordance with the provisions of this chapter, all qualified individuals shall have the opportunity to be considered for service on grand and petit juries in the District of Columbia and shall be obligated to serve as jurors when summoned for that purpose. (Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Cross references. — As to qualifications for jurors in federal courts, see 28 U.S.C. § 1865.

Section references. — This section is referred to in § 11-1908.

Short title. — Section 1 of Public Law 99-650 provided that "This Act may be cited as the 'District of Columbia Jury System Act'."

Board of Judges to have authority to promulgate and adopt plan. — See § 4(b) of P.L. 99-650.

Applicability of 28 U.S.C. §§ 1861 and 1865(b)(1). — Title 28 U.S.C. §§ 1861 and 1865(b)(1) (1986 Supp.) are made applicable to the District of Columbia by this section. *Kingsbury v. United States*, App. D.C., 520 A.2d 686 (1987).

Source of fair cross section requirement for grand juries is the Fifth Amendment right to an indictment by a grand jury rather than the Sixth Amendment right to trial by jury. *Obregon v. United States*, App. D.C., 423 A.2d 200 (1980), cert. denied, 452 U.S. 918, 101 S. Ct. 3054, 69 L. Ed. 2d 422 (1981).

Disqualification for mental or physical

infirmity. — This section incorporates 28 U.S.C. § 1865(b)(4), which permits one to be disqualified from jury service if he or she "is incapable, by reason of mental or physical infirmity, to render satisfactory jury service." *Khaalis v. United States*, App. D.C., 408 A.2d 313 (1979), cert. denied, 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 781 (1980).

Exclusion of blind individuals violative of federal law. — The policy of the Superior Court of the District of Columbia of categorically excluding blind individuals from jury service is a violation of the Rehabilitation Act of 1973, 29 U.S.C. § 794, the Americans with Disabilities Act, 42 U.S.C. § 12132, and the Civil Rights Act of 1871, 42 U.S.C. § 1983. *Galloway v. Superior Court*, 816 F. Supp. 12 (D.D.C. 1993).

Hearing on alleged incompetence following conclusion of trial. — Evidence of an adjudication of mental illness or incompetence is usually necessary even to justify a court's conducting, after the conclusion of a trial, a hearing into the alleged incompetence. *Khaalis*

v. United States, App. D.C., 408 A.2d 313 (1979), cert. denied, 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 781 (1980).

§ 11-1902. Definitions.

For purposes of this chapter, the following terms have the following meanings:

(1) The term “Board of Judges” means the chief judge and the associate judges of the Superior Court of the District of Columbia.

(2) The term “chief judge” means the chief judge of the Superior Court of the District of Columbia.

(3) The term “clerk” means the clerk of the Superior Court of the District of Columbia or any deputy clerk.

(4) The term “Court” means the Superior Court of the District of Columbia and may include any judge of the Court acting in an official capacity.

(5) The term “juror” means (A) any individual summoned to Superior Court for the purpose of serving on a jury; (B) any individual who is on call and available to report to Court to serve on a jury upon request; and (C) any individual whose service on a jury is temporarily deferred.

(6) The term “jury” includes a grand or petit jury.

(7) The term “jury system plan” means the plan adopted by the Board of Judges of the Court, consistent with the provisions of this chapter, to govern the administration of the jury system.

(8) The term “master juror list” means the consolidated list or lists compiled and maintained by the Board of Judges of the District of Columbia Courts which contains the names of prospective jurors for service in the Superior Court of the District of Columbia.

(9) The term “random selection” means the selection of names of prospective jurors in a manner immune from the purposeful or inadvertent introduction of subjective bias, so that no recognizable class of the individuals on the list or lists from which the names are being selected can be purposefully or inadvertently included or excluded.

(10) The term “resident of the District of Columbia” means an individual who has resided or has been domiciled in the District of Columbia for not less than six months. (Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Short title. — See note to § 11-1901.

Challenging jury composition. — The relevant procedures for challenging jury composition or selection methods under the federal

statute are set forth in 28 U.S.C. § 1867(a). These procedures are made applicable to the District by virtue of this section. *Kingsbury v. United States*, App. D.C., 520 A.2d 686 (1987).

§ 11-1903. Prohibition of discrimination.

A citizen of the District of Columbia may not be excluded or disqualified from jury service as a grand or petit juror in the District of Columbia on account of race, color, religion, sex, national origin, ancestry, economic status, marital status, age, or (except as provided in this chapter) physical handicap. (Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Section references. — This section is referred to in § 11-1908.

Short title. — See note to § 11-1901.

Subsection (a) is constitutional. *Hackney v. United States*, App. D.C., 389 A.2d 1336 (1978), cert. denied, 439 U.S. 1132, 99 S. Ct. 1054, 59 L. Ed. 2d 95 (1979).

Return of an indictment by a grand jury of the United States District Court to the Superior Court of the District of Columbia does not violate indictor's Fifth Amendment rights. *Atkinson v. United States*, App. D.C., 295 A.2d 899 (1972).

"Take cognizance" includes to return indictment. — The argument that this section permits a grand jury only to "take cognizance" of a matter ultimately proper before another court but not to return an indictment with respect to such matters was overly literal and unpersuasive. *Hackney v. United States*, App. D.C., 389 A.2d 1336 (1978), cert. denied, 439

U.S. 1132, 99 S. Ct. 1054, 59 L. Ed. 2d 95 (1979).

Superior Court grand juries have powers comparable to federal grand juries. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

Including power to subpoena for lineup. — A grand jury may subpoena a suspect and direct him to stand in a lineup. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 314 (1979).

And to subpoena extraterritorially. — Superior Court grand jury has the power to direct subpoenas to persons beyond the territorial borders of the District. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 314 (1979).

§ 11-1904. Jury system plan.

(a) The Board of Judges shall adopt, implement, and as necessary modify, a written jury system plan for the random selection and service of grand and petit jurors in the Superior Court consistent with the provisions of this chapter. The adopted plan and any modifications shall be subject to a 30-day period of review by Congress in the manner provided for an act of the Council under section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act. The plan shall include —

(1) detailed procedures to be followed by the clerk of the Court in the random selection of names from the master juror list;

(2) provisions for a master jury wheel (or other device of like purpose and function) which shall be emptied and refilled at specified intervals, not to exceed 24 months;

(3) provisions for the disclosure to the parties and the public of the names of individuals selected for jury service, except in cases in which the chief judge determines that confidentiality is required in the interest of justice; and

(4) procedures to be followed by the clerk of the Court in assigning individuals to grand and petit juries.

(b) The jury system plan shall be administered by the clerk of the Court under the supervision of the Board of Judges. (Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Short title. — See note to § 11-1901.

References in text. — Section 602 of the District of Columbia Self-Government and Governmental Reorganization Act, referred to in subsection (a), is codified as § 1-233.

Jurisdiction to consider whether infirmities in jury selection process vitiate conviction. — The Court of Appeals has juris-

diction under § 17-306 to consider whether infirmities in the jury selection process vitiate a conviction, and if it so holds, reverse that conviction. *Sweet v. United States*, App. D.C., 449 A.2d 315 (1982).

Modified jury selection plan. — See *Sweet v. United States*, App. D.C., 449 A.2d 315 (1982).

§ 11-1905. Master juror list.

(a) The jury system plan shall provide for the compilation and maintenance by the Board of Judges of a master juror list from which names of prospective jurors shall be drawn. Such master juror list shall consist of the list of District of Columbia voters, and names from such other appropriate sources and lists as may be provided in the jury system plan.

(b) Notwithstanding any other provision of law, upon request of the Board of Judges any person having custody, possession, or control of any list required under subsection (a) shall provide such list to the Court, at cost, at all reasonable times. Each list shall contain the names and addresses of individuals on the list. Any list obtained by the Court under the provisions of this chapter may be used by the Court only for the selection of jurors pursuant to this chapter. (Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Short title. — See note to § 11-1901.

§ 11-1906. Qualification of jurors.

(a) The jury system plan shall provide for procedures for the random selection and qualification of grand and petit jurors from the master juror list. Such plan may provide for separate or joint qualification and summoning processes.

(b)(1) An individual shall be qualified to serve as a juror if that individual —

(A) is a resident of the District of Columbia;

(B) is a citizen of the United States;

(C) has attained the age of 18 years; and

(D) is able to read, speak, and understand the English language.

(2) An individual shall not be qualified to serve as a juror —

(A) if determined to be incapable by reason of physical or mental infirmity of rendering satisfactory jury service; or

(B) if that individual has been convicted of a felony or has a pending felony or misdemeanor charge, except that an individual disqualified for jury service by reason of a felony conviction may qualify for jury service not less than one year after the completion of the term of incarceration, probation, or parole following appropriate certification under procedures set out in the jury system plan.

(3) Any determination regarding qualification for jury service shall be made on the basis of information provided in the juror qualification form and any other competent evidence.

(4) An individual who is blind may not be disqualified from serving as a juror solely on the basis of a blindness, but may be disqualified from serving as a juror in a particular case if the individual's blindness makes the individual incapable of rendering satisfactory jury service in that case.

(c)(1) The jury system plan shall provide that a juror qualification form be mailed to each prospective juror. The form and content of such juror qualification form shall be determined under the plan. Notarization of the juror qualification form shall not be required.

(2) An individual who fails to return a completed juror qualification form as instructed may be ordered by the Court to appear before the clerk to fill out such form, to appear before the Court and show cause why he or she should not be held in contempt for failure to submit the qualification form, or both. An individual who fails to show good cause for such failure, or who without good cause fails to appear pursuant to a Court order, may be punished by a fine of not more than \$300, by imprisonment for not more than seven days, or both.

(d) An individual who intentionally misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may be punished by a fine of not more than \$300, by imprisonment for not more than 90 days, or both. (July 29, 1970, 84 Stat. 515, Pub. L. 91-358, title I, § 111, 1973 Ed., § 11-1901; Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2; June 28, 1994, 108 Stat. 731, Pub. L. 103-269.)

Cross references. — As to qualifications for jurors in federal courts, see 28 U.S.C. § 1865.

Section references. — This section is referred to in §§ 11-1907 and 11-1908.

Effect of amendments. — Pub. L. 103-269 added (b)(4).

Short title. — See note to § 11-1901.

Disqualification for mental or physical infirmity. — This section incorporates 28 U.S.C. § 1865(b)(4), which permits one to be disqualified from jury service if he or she “is incapable, by reason of mental or physical infirmity, to render satisfactory jury service.”

Khaalis v. United States, App. D.C., 408 A.2d 313 (1979), cert. denied, 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 781 (1980).

Hearing on alleged incompetence following conclusion of trial. — Evidence of an adjudication of mental illness or incompetence is usually necessary even to justify a court’s conducting, after the conclusion of a trial, a hearing into the alleged incompetence. *Khaalis v. United States*, App. D.C., 408 A.2d 313 (1979), cert. denied, 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 781 (1980).

§ 11-1907. Summoning of prospective jurors.

(a) At such times as are determined under the jury system plan, the Court shall summon or cause to be summoned from among qualified individuals under section 11-1906 sufficient prospective jurors to fulfill requirements for petit and grand jurors for the Court. A summons shall require a prospective juror to report for possible jury service at a specified time and place unless advised otherwise by the Court. Service of prospective jurors may be made personally or by first-class, registered, or certified mail as determined under the plan.

(b) A prospective juror who fails to appear for jury duty may be ordered by the Court to appear and show cause why he or she should not be held in contempt for such failure to appear. A prospective juror who fails to show good cause for such failure, or who without good cause fails to appear pursuant to a Court order, may be punished by a fine of not more than \$300, by imprisonment for not more than seven days, or both. (Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Short title. — See note to § 11-1901.

§ 11-1908. Exclusion from jury service.

(a) Subject to the provisions of this section and of sections 11-1903, 11-1906, and 11-1909, no individual or class of individuals may be disqualified, excluded, excused, or exempt from service as a juror.

(b) An individual summoned for jury service may be: (1) excluded by the Court on the ground that that individual may be unable to render impartial jury service or that his or her service as a juror would be likely to disrupt the proceedings; (2) excluded upon peremptory challenge as provided by law; (3) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown; or (4) excluded upon determination by the Court that his or her service as a juror would likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. No person shall be excluded under clause (4) of this subsection unless the judge, in open Court, determines that such exclusion is warranted and that exclusion of that individual will not be inconsistent with sections 11-1901 and 11-1903 of this chapter.

(c) An individual excluded from a jury shall be eligible to sit on another jury if the basis for the initial exclusion would not be relevant to his or her ability to serve on such other jury. The procedures for challenges to and review of exclusions from jury service shall be set forth in the jury system plan. (Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Short title. — See note to § 11-1901.

§ 11-1909. Deferral from jury service.

A qualified prospective juror may be deferred from jury service only upon a showing of undue hardship, extreme inconvenience, public necessity, or temporary physical or mental disability which would affect service as a juror. The procedure for requesting a deferral from jury service and the procedure and basis for granting a deferral shall be set forth in the master jury plan. (Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Section references. — This section is referred to in § 11-1908.

Short title. — See note to § 11-1901.

§ 11-1910. Challenging compliance with selection procedures.

(a) A party may challenge the composition of a jury by a motion for appropriate relief. A challenge shall be brought and decided before any individual juror is examined, unless the Court orders otherwise. The motion shall be in writing, supported by affidavit, and shall specify the facts constituting the grounds for the challenge. If the Court so determines, the motion may be decided on the basis of the affidavits filed with the challenge. If the Court orders trial of the challenge, witnesses may be examined on oath by the Court and may be so examined by either party.

(b) If the Court determines that in selecting a grand or petit jury there has been a substantial failure to comply with this chapter, the Court shall stay the proceedings pending the selection of a jury in conformity with this chapter, quash the indictment, or grant other appropriate relief.

(c) The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the District of Columbia, the United States, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this chapter. Nothing in this section shall preclude any person from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin, economic status, marital status, age, or physical handicap in the selection of individuals for service on grand or petit juries. (Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Section references. — This section is referred to in § 11-1914.

Short title. — See note to § 11-1901.

§ 11-1911. Length of service.

The length of service for grand and petit jurors shall be determined by the master jury plan. In any twenty-four month period an individual shall not be required to serve more than once as a grand or petit juror except as may be necessary by reason of the insufficiency of the master juror list or as ordered by the Court. (July 29, 1970, 84 Stat. 515, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1905; Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Short title. — See note to § 11-1901.

§ 11-1912. Juror fees.

(a) Notwithstanding section 602(a) of the District of Columbia Self-Government and Governmental Reorganization Act, grand and petit jurors serving in the Superior Court shall receive fees and expenses at rates established by the Council of the District of Columbia, except that such fees and expenses may not exceed the respective rates paid to such jurors in the federal system.

(b) A petit or grand juror receiving benefits under the laws of employment security of the District of Columbia shall not lose such benefits on account of performance of juror service.

(c) Employees of the United States or of any State or local government who serve as grand or petit jurors and who continue to receive regular compensation during the period of jury service shall not be compensated for jury service. Amounts representing reimbursement of expenses incurred in connection with jury service may be paid to such employees to the extent provided in the jury system plan. (July 29, 1970, 84 Stat. 516, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1906; Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Short title. — See note to § 11-1901.

References in text. — Section 602 of the District of Columbia Self-Government and Gov-

ernmental Reorganization Act, referred to in subsection (a), is codified as § 1-233.

§ 11-1913. Protection of employment of jurors.

(a) An employer shall not deprive an employee of employment, threaten, or otherwise coerce an employee with respect to employment because the employee receives a summons, responds to a summons, serves as a juror, or attends Court for prospective jury service.

(b) An employer who violates subsection (a) is guilty of criminal contempt. Upon a finding of criminal contempt an employer may be fined not more than \$300, imprisoned for not more than 30 days, or both, for a first offense, and may be fined not more than \$5,000, imprisoned for not more than 180 days, or both, for any subsequent offense.

(c) If an employer discharges an employee in violation of subsection (a), the employee within 9 months of such discharge may bring a civil action for recovery of wages lost as a result of the violation, for an order of reinstatement of employment, and for damages. If an employee prevails in an action under this subsection, that employee shall be entitled to reasonable attorney fees fixed by the court. (Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Short title. — See note to § 11-1901.

§ 11-1914. Preservation of records.

(a) All records and lists compiled and maintained in connection with the selection and service of jurors shall be preserved for the length of time specified in the jury system plan.

(b) The contents of any records or lists used in connection with the selection process shall not be disclosed, except in connection with the preparation or presentation of a motion under § 11-1910, or until all individuals selected to serve as grand or petit jurors from such lists have been discharged. (Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Short title. — See note to § 11-1901.

§ 11-1915. Fraud in the selection process.

An individual who commits fraud in the processing or selection of jurors or prospective jurors, either by causing any name to be inserted into any list maliciously or by causing any name to be deleted from any list maliciously (including malicious data entry or the altering of any data processing machine or any set of instructions or programs which control data processing equipment for such malicious purpose), is guilty of the crime of jury tampering, and, upon conviction, may be punished by a fine of not more than \$10,000, imprisonment for not more than two years, or both. This section shall not limit any other provisions of law concerning the crime of jury tampering. (Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Short title. — See note to § 11-1901.

§ 11-1916. Grand jury; additional grand jury.

(a) A grand jury serving in the District of Columbia may take cognizance of all matters brought before it regardless of whether an indictment is returnable in the Federal or District of Columbia courts.

(b) If the United States Attorney for the District of Columbia certifies in writing to the chief judge that an additional grand jury is required, the judge may in his or her discretion order an additional grand jury summoned which shall be drawn at such time as he or she designates. Unless discharged by order of the judge, the additional grand jury shall serve until the end of the term for which it is drawn. (July 29, 1970, 84 Stat. 515, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1903; Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Short title. — See note to § 11-1901.

Subsection (a) is constitutional. Hackney v. United States, App. D.C., 389 A.2d 1336 (1978), cert. denied, 439 U.S. 1132, 99 S. Ct. 1054, 59 L. Ed. 2d 95 (1979).

Return of an indictment by a grand jury of the United States District Court to the Superior Court of the District of Columbia does not violate indietee's Fifth Amendment rights. Atkinson v. United States, App. D.C., 295 A.2d 899 (1972).

"Take cognizance" includes to return indictment. — The argument that this section permits a grand jury only to "take cognizance" of a matter ultimately proper before another court but not to return an indictment with respect to such matters was overly literal and unpersuasive. Hackney v. United States, App. D.C., 389 A.2d 1336 (1978), cert. denied, 439 U.S. 1132, 99 S. Ct. 1054, 59 L. Ed. 2d 95 (1979).

"Official proceeding" within meaning of 18 U.S.C. § 1512(b). — Where defendant was charged with violating 18 U.S.C. § 1512(b), for threatening a witness subpoenaed to testify before a Superior Court grand jury, this section and Super. Ct. Crim. R. 6 recognize that a grand jury summoned by Superior Court may

return indictments in either Superior Court or U.S. District Court, and pending Superior Court grand jury proceeding was an "official proceeding" within the meaning of § 1512(b) for purposes of establishing federal charge for witness tampering. United States v. Allen, 729 F. Supp. 120 (D.D.C. 1989).

Superior Court grand juries have powers comparable to federal grand juries. Christian v. United States, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

Including power to subpoena for lineup. — A grand jury may subpoena a suspect and direct him to stand in a lineup. Christian v. United States, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 314 (1979).

And to subpoena extraterritorially. — Superior Court grand jury has the power to direct subpoenas to persons beyond the territorial borders of the District. Christian v. United States, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 314 (1979).

Cited in United States v. Smith, 729 F. Supp. 1380 (D.D.C. 1990).

§ 11-1917. Coordination and cooperation of courts.

To the extent feasible, the Superior Court and the United States District Court shall consider the respective needs of each court in the qualification, selection, and service of jurors. Nothing in this chapter shall be construed to prevent such courts from entering into any agreement for sharing resources and facilities (including automated data processing and hardware and software, forms, postage, and other resources). (Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Short title. — See note to § 11-1901.

§ 11-1918. Effect of invalidity.

If any provision of this Act [chapter] or the application of that provision is held invalid, such invalidity shall not affect any other provision or application of this Act [chapter] which can be given effect without the invalid provision or application. (Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Short title. — See note to § 11-1901.

Editor's notes. — The bracketed word "chapter" was inserted by the editor.

CHAPTER 21. REGISTER OF WILLS.

Sec.

11-2101. Continuation of office.

11-2102. Appointment; oath; bond; qualifications; compensation.

11-2103. Services as clerk.

Sec.

11-2104. Powers and duties; restrictions; penalties.

11-2105. Deputies and other employees.

11-2106. Accounts.

§ 11-2101. Continuation of office.

The Office of the Register of Wills shall continue as an office in the Probate Division of the Superior Court. (July 29, 1970, 84 Stat. 516, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2101.)

§ 11-2102. Appointment; oath; bond; qualifications; compensation.

(a) The Superior Court shall appoint and remove the Register of Wills. The Register of Wills shall —

(1) take an oath for the faithful and impartial discharge of the duties of the office; and

(2) give bond, with two or more sureties, to be approved by the chief judge of the Superior Court, in the amount designated by the court, faithfully to discharge the duties of the office, and seasonably to record (A) the decrees and orders of the court in any matters over which the court exercises probate jurisdiction or powers, (B) all wills proved before the Register of Wills or the court, and (C) all other matters directed to be recorded in the court or in the office.

The bond shall be entered in full upon the minutes of the Superior Court and the original filed with the records of the Superior Court.

(b) A person may not be appointed the Register of Wills for the District of Columbia unless that person —

(1) is a citizen of the United States;

(2) has been a member of the bar of the District of Columbia for a period of at least five of the ten years immediately before appointment; and

(3) has been actively engaged in the practice of probate law in the District of Columbia or otherwise has broad experience in, or knowledge on the subject of, the administration of the estates of deceased persons in the District of Columbia.

(c) The compensation of the Register of Wills shall be fixed by the Superior Court without regard to chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code but at a rate not to exceed the maximum rate prescribed for GS-16 of the General Schedule. (July 29, 1970, 84 Stat. 516, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2102; June 13, 1994, Pub. L. 103-266, §§ 1(b)(96), (97), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (a) and (b) to remove gender-specific references.

References in text. — The General Schedule, referred to at the end of subsection (c) of this section, appears in 5 U.S.C. § 5332.

§ 11-2103. Services as clerk.

With respect to the Probate Division of the Superior Court, the Register of Wills shall perform such duties as clerk as the chief judge of the Superior Court may assign. (July 29, 1970, 84 Stat. 516, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2103.)

§ 11-2104. Powers and duties; restrictions; penalties.

(a) The Register of Wills may —

(1) receive inventories and accounts of sales, examine vouchers, and state accounts of executors, administrators, collectors, and guardians, subject to final approval of the court;

(2) take the probate of claims against the estates of deceased persons that are properly brought before the Register of Wills, and approve or reject claims not exceeding \$300;

(3) take the probate of wills and accept the bonds of executors, administrators, collectors, and guardians, subject to approval of the court; and

(4) audit and state fiduciary accounts.

(b) In matters over which the Superior Court has probate jurisdiction or powers, the Register of Wills shall —

(1) make full and fair entries, in separate records, of the proceedings of the court;

(2) make fair record in strong bound books of all wills proved before the Register of Wills or the court, keeping separate books for wills within the jurisdiction of the court;

(3) make fair and separate record of other matters required by law to be recorded in the court;

(4) lodge in places of safety, designated by the court, original papers filed with him [the Register of Wills];

(5) make out and issue every summons, process, and order of the court;

(6) make fair and uniform tables of the Register's fees, and post them in a conspicuous place in the Register's office for the inspection of persons having business therein;

(7) prepare and submit to the Executive Officer of the District of Columbia courts such reports as may be required; and

(8) in every respect, act under the control and direction of the court.

(c) The Register of Wills may not —

(1) practice law in any court of the District of Columbia or of the United States; or

(2) demand or receive any fee, gratuity, gift, or reward for giving advice in any matter relating to the office.

(d) The Register of Wills shall forfeit to the court the sum of \$50 for each day that the tables referred to in subsection (b)(6) are missing through the Register's neglect, which may be recovered as other debts for the same amount are recoverable.

(e) If the Register of Wills or a person acting for the Register of Wills takes a greater fee than the fee provided for by law, the Register of Wills shall pay the

party injured \$100, which may be recovered as other debts for the same amount are recoverable. (July 29, 1970, 84 Stat. 516, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2104; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 5(b); June 13, 1994, Pub. L. 103-266, §§ 1(b)(98)-(102), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (a)(2), (b)(2), (b)(6), (c)(2), (d) and (e) to remove gender-specific references.

§ 11-2105. Deputies and other employees.

The Executvie [Executive] Officer of the District of Columbia courts shall appoint and remove such personnel as may be needed by the Register of Wills, pursuant to chapter 17 of this title. (July 29, 1970, 84 Stat. 517, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2105.)

Editor's notes. — Near the beginning of this section, "Executive" was inserted, in brackets, to correct a misspelling.

§ 11-2106. Accounts.

All fees, costs, and other moneys, except uncollected fees not required by law to be prepaid, collected by the Register of Wills with respect to matters within the jurisdiction of the Superior Court shall be turned over to the Fiscal Officer of the District of Columbia courts. (July 29, 1970, 84 Stat. 517, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2106.)

CHAPTER 23. MEDICAL EXAMINER.

Sec.

- 11-2301. Medical Examiner; Deputies; appointment, qualifications, and compensation.
- 11-2302. Supporting services and facilities.
- 11-2303. Former duties of coroner; oaths; teaching.
- 11-2304. Deaths to be investigated; notification and investigation of deaths.
- 11-2305. Possession of evidence and property.
- 11-2306. Further investigation; autopsy.

Sec.

- 11-2307. Autopsy by pathologist other than medical examiner.
- 11-2308. Delivery of body; expenses.
- 11-2309. Records; reports; fees for other services.
- 11-2310. Records as evidence.
- 11-2311. Autopsies performed under court order.
- 11-2312. Tissue transplants.

§ 11-2301. Medical Examiner; Deputies; appointment, qualifications, and compensation.

(a) The Commissioner [Mayor] of the District of Columbia shall designate or appoint a Chief Medical Examiner and such Deputy Medical Examiners for the District of Columbia as may be necessary.

(b) The Chief Medical Examiner and his deputies shall be physicians licensed in the District of Columbia. The Chief Medical Examiner and at least one deputy shall be certified in anatomic pathology by the American Board of Pathology or be board eligible. They may be designated from among physicians practicing in the District of Columbia Department of Public Health [Department of Human Services].

(c) The Commissioner [Mayor] shall fix the compensation of the Chief Medical Examiner and his deputies at a rate or rates not in excess of the per diem equivalent of the rate for GS-18 of the General Schedule contained in section 5332 of title 5 of the United States Code. (July 29, 1970, 84 Stat. 518, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2301.)

Establishment of Commission on Medical Examiner's Office. — See Mayor's Order 89-62, March 28, 1989.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the Dis-

trict of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

Transfer of functions. — Functions vested in the Department of Public Health were transferred to the Department of Human Resources by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 11-2302. Supporting services and facilities.

The Commissioner [Mayor] shall furnish or make available such investigative, technical, and clerical personnel, facilities, and equipment as the medical examiners shall require, or he may arrange or contract for such services, equipment, and facilities with the United States Government or universities

and hospitals in the District of Columbia. (July 29, 1970, 84 Stat. 518, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2302.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the

District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-2303. Former duties of coroner; oaths; teaching.

(a) The Chief Medical Examiner shall be responsible for all the medical functions formerly performed by the coroner in the District of Columbia, consistent with the provisions of this chapter, and the Chief Medical Examiner and those deputies may administer oaths and affirmations and take affidavits in connection with the performance of their duties.

(b) The Chief Medical Examiner and those deputies may be authorized by the Commissioner [Mayor] of the District of Columbia to teach medical and law school classes, to conduct special classes for law enforcement personnel, and to engage in other activities related to their work. (July 29, 1970, 84 Stat. 518, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2303; June 13, 1994, Pub. L. 103-266, § 1(b)(103), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-2304. Deaths to be investigated; notification and investigation of deaths.

(a) Under regulations established by the Chief Medical Examiner, the following types of human deaths occurring in the District of Columbia shall be investigated:

(1) Violent deaths, whether apparently homicidal, suicidal, or accidental, including deaths due to thermal, chemical, electrical, or radiational injury, and deaths due to criminal abortion, whether apparently self-induced or not.

(2) Sudden deaths not caused by readily recognizable disease.

(3) Deaths under suspicious circumstances.

(4) Death of persons whose bodies are to be cremated, dissected, buried at sea, or otherwise disposed of so as to be thereafter unavailable for examination.

(5) Deaths related to disease resulting from employment or to accident while employed.

(6) Deaths related to disease which might constitute a threat to public health.

(b) All law enforcement officers, physicians, undertakers, embalmers and other persons shall promptly notify a medical examiner of the occurrence of all deaths coming to their attention which are subject to investigation under subsection (a) of this section and shall assist in making dead bodies and related evidence available to the medical examiner for investigation and autopsy.

(c) Any physician, undertaker, or embalmer who willfully fails to comply with this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$100 nor more than \$1,000.

(d) The Chief Medical Examiner shall by regulation prescribe procedures for taking possession of a body following a death subject to investigation under subsection (a) of this section and for obtaining all essential facts concerning the medical causes of death and the names and addresses of as many witnesses as it is practicable to obtain. (July 29, 1970, 84 Stat. 518, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2304.)

Section references. — This section is referred to in § 11-2305.

§ 11-2305. Possession of evidence and property.

(a) At the scene of any death subject to investigation under section 11-2304, a law enforcement officer or the medical examiner shall take possession of any objects or articles useful in establishing the cause of death and shall hold them as evidence.

(b) In the absence of the next of kin, a police officer or the medical examiner may take possession of all property of value found on or in the custody of the deceased. If possession is taken of the property, the police officer or medical examiner shall make an exact inventory of it, and deliver the property to the property clerk of the Metropolitan Police Department. (July 29, 1970, 84 Stat. 519, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2305.)

§ 11-2306. Further investigation; autopsy.

(a) If, in the opinion of the medical examiner, the cause of death is established with reasonable medical certainty, the medical examiner shall complete a report thereon.

(b) If, in the opinion of the Chief Medical Examiner, or the United States attorney, further investigation as to the cause of death is required or the public interest so requires, a medical examiner shall either perform, or arrange for a qualified pathologist to perform, an autopsy on the body of the deceased. No consent of next of kin shall be required for an autopsy performed pursuant to this section.

(c) The medical examiner shall make a complete record of the findings of the autopsy and conclusions with respect thereto and shall prepare a report, and, upon request, furnish a copy to the appropriate law enforcement agency. (July

29, 1970, 84 Stat. 519, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2306; June 13, 1994, Pub. L. 103-266, §§ 1(b)(104), (105), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (a) and (c) to remove gender-specific references.

Delay in release of body. — If the statutory duties imposed by statute upon the Chief Med-

ical Examiner have not been accomplished within the period after which a body should be released, there is a legitimate reason for delay. *Community for Creative Non-Violence v. Gray*, 121 WLR 557 (Super. Ct. 1993).

§ 11-2307. Autopsy by pathologist other than medical examiner.

(a) If an autopsy is performed by a pathologist other than a medical examiner by request of a medical examiner, the pathologist shall furnish to the medical examiner a complete record of the findings of the autopsy and conclusions with respect thereto. The medical examiner shall thereupon prepare a report, indicating the name of the pathologist performing the autopsy and the pathologist's findings and conclusions, and the medical examiner's own comments with respect thereto, if appropriate, and, upon request, shall furnish a copy thereof to the appropriate law enforcement agency.

(b) A pathologist other than a medical examiner who performs an autopsy at the request of a medical examiner shall be compensated in accordance with a fee rate established by the Commissioner [Mayor] of the District of Columbia. (July 29, 1970, 84 Stat. 519, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2307; June 13, 1994, Pub. L. 103-266, §§ 1(b)(106), (107), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (a) to remove gender-specific references.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-2308. Delivery of body; expenses.

(a) Following investigation or autopsy, the medical examiner shall release the body of the deceased to the person having the right to the body for purposes of burial pursuant to law. If there is no such person, the medical examiner shall dispose of it according to law.

(b) Expenses of transportation of a body by a medical examiner and of autopsies performed pursuant to this chapter shall be borne by the District of Columbia. (July 29, 1970, 84 Stat. 519, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2308; June 13, 1994, Pub. L. 103-266, § 1(b)(108), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (a) to remove gender-specific references.

Delay in release of body. — If the statutory

duties imposed by statute upon the Chief Medical Examiner have not been accomplished within the period after which a body should be released, there is a legitimate reason for delay.

Community for Creative Non-Violence v. Gray,
121 WLR 557 (Super. Ct. 1993).

Dep't of Human Servs., App. D.C., 629 A.2d
1215 (1993).

Cited in Clement v. District of Columbia

§ 11-2309. Records; reports; fees for other services.

(a) The Chief Medical Examiner shall be responsible for maintaining full and complete records and files, properly indexed, giving the name, if known, of every person whose death is investigated, the place where the body was found, the date, cause, and manner of death, and all other relevant information and reports of the medical examiner concerning the death, and shall issue a death certificate.

(b) The records and files maintained under the provisions of subsection (a) of this section shall be open to inspection by the Mayor of the District of Columbia or the Mayor's authorized representative, the United States attorney and the United States Attorney's assistants, the Metropolitan Police Department, or any other law enforcement agency or official; and the medical examiner shall promptly deliver to such persons copies of all records relating to every death as to which further investigation may be advisable.

(c) Any other person with a legitimate interest may obtain copies of records maintained under the provisions of subsection (a) upon such conditions and payment of such fees as may be prescribed by the Chief Medical Examiner. If such person fails to meet the prescribed conditions, such person may obtain copies of such records pursuant to court order if the court is satisfied that such person has a legitimate interest.

(d) The Chief Medical Examiner shall prepare an annual report to the Commissioner [Mayor] of the District of Columbia containing information on the number of autopsies performed, statistics as to cause of death, and such other relevant information as the Commissioner [Mayor] of the District of Columbia shall require. The report shall be open to inspection by the public. The report shall not identify by name deceased persons examined.

(e) Medical examiners may charge fees, at rates prescribed by the Chief Medical Examiner, for completing insurance forms or performing similar services for private parties. (July 29, 1970, 84 Stat. 520, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2309; June 13, 1994, Pub. L. 103-266, §§ 1(b)(109), (110), 108 Stat. 713.)

Section references. — This section is referred to in § 11-2310.

Effect of amendments. — Public Law 103-266 amended (b) and (c) to remove gender-specific references; and, in (b), substituted "Mayor" for "Commissioner."

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the

District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

Delay in release of body. — If the statutory duties imposed by statute upon the Chief Medical Examiner have not been accomplished within the period after which a body should be released, there is a legitimate reason for delay. Community for Creative Non-Violence v. Gray, 121 WLR 557 (Super. Ct. 1993).

§ 11-2310. Records as evidence.

The records maintained pursuant to section 11-2309, or reproductions thereof certified by the Chief Medical Examiner, are admissible [admissable] in evidence in any court in the District of Columbia, except that statements made by witnesses or other persons and conclusions upon non-medical matters are not made admissible by this section. (July 29, 1970, 84 Stat. 520, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2310.)

Editor's notes. — Near the middle of this section, "admissible" was inserted, in brackets, to correct a misspelling.

§ 11-2311. Autopsies performed under court order.

In the case of sudden, violent, or suspicious death when the body is buried without investigation, the United States attorney, on his or her own motion or on request of a medical examiner or the Metropolitan Police Department, may petition the appropriate court for an order to conduct an inquiry. The court may order the body exhumed and an autopsy performed. In such cases, records and reports shall be filed as if the autopsy were performed prior to burial except that a copy of the report shall be furnished directly to the court. (July 29, 1970, 84 Stat. 520, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2311; June 13, 1994, Pub. L. 103-266, § 1(b)(111), 108 Stat. 713.)

Section references. — This section is referred to in § 27-128.

266 amended this section to remove gender-specific references.

Effect of amendments. — Public Law 103-

§ 11-2312. Tissue transplants.

The Chief Medical Examiner may allow the removal of tissue pursuant to section 9 of the District of Columbia Tissue Bank Act (D.C. Code, sec. 2-258 [2-1605]). (July 29, 1970, 84 Stat. 520, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2312.)

References in text. — At the end of this section, "2-1605" was inserted, in brackets, to

reflect the renumbering of sec. 2-258 in the 1981 Edition of the D.C. Code.

CHAPTER 25. ATTORNEYS.

Sec.

11-2501. Admission to bar; regulations; prior admission.

11-2502. Censure, suspension, or disbarment for cause.

11-2503. Disbarment upon conviction of crime;

Sec.

procedure for censure, suspension, or disbarment.

11-2504. Censure, suspension, or disbarment by other courts.

§ 11-2501. Admission to bar; regulations; prior admission.

(a) The District of Columbia Court of Appeals shall make such rules as it deems proper respecting the examination, qualification, and admission of persons to membership in its bar, and their censure, suspension, and expulsion.

(b) Members of the bar of the District of Columbia Court of Appeals shall be eligible to practice in the District of Columbia courts.

(c) Members of the bar of the United States District Court for the District of Columbia in good standing on April 1, 1972, shall be automatically enrolled as members of the bar of the District of Columbia Court of Appeals, and shall be subject to its disciplinary jurisdiction. (July 29, 1970, 84 Stat. 521, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2501.)

Section references. — This section is referred to in § 47-1814.1a.

Court of Appeals has exclusive jurisdiction over review of admission examinations. — Since admission to the Bar of the District of Columbia is governed by the rules of the Court of Appeals, that court has exclusive jurisdiction to entertain a petition for review of admission examinations, and the Superior Court properly dismissed such a petition for lack of jurisdiction. *Kennedy v. Educational Testing Serv., Inc.*, App. D.C., 393 A.2d 523 (1978).

D.C. Bar R. XI, § 1 creates and defines scope and duties associated with disciplinary authority. — While subsection (a) of this section and § 11-2502 create in the Court of Appeals the power to establish rules for managing its bar, it is D.C. Bar R. XI, § 1 that actually creates and defines the scope and duties associated with the disciplinary authority of this court and the Board of Professional Responsibility. In *re Wade*, App. D.C., 526 A.2d 936 (1987), cert. denied, 484 U.S. 1010, 108 S. Ct. 709, 98 L. Ed. 2d 659 (1988).

Exclusive authority to regulate admission. — The District of Columbia Court of Appeals possesses exclusive authority to regulate admission to its bar. *Doe v. Board on Professional Responsibility*, 717 F.2d 1424 (D.C. Cir. 1983).

Federal noninterference into bar admission matters. — Absent compelling circumstances, the federal courts follow a general rule of noninterference into matters of bar admis-

sions. *Hickey v. District of Columbia Court of Appeals*, 457 F. Supp. 584 (D.D.C. 1978), rev'd on other grounds, 661 F.2d 1295 (D.C. Cir. 1981).

Antitrust laws do not apply to Court of Appeals' promulgation of bar admission rules. *Hickey v. District of Columbia Court of Appeals*, 457 F. Supp. 584 (D.D.C. 1978), rev'd on other grounds, 661 F.2d 1295 (D.C. Cir. 1981).

Standard for admission. — Although the term "good moral character" is a term of broad dimensions and can be defined in many ways, no better test for the purpose of admission to the bar is known and a candidate for admission to the bar must meet such standard. In *re Heller*, App. D.C., 333 A.2d 401, cert. denied, 423 U.S. 840, 96 S. Ct. 70, 46 L. Ed. 2d 59 (1975).

Court of Appeals alone makes final decision as to admission to bar. — The Court of Appeals alone may make the final decision, whether express or implied, concerning whether to admit a particular applicant to the District of Columbia bar. *Powell v. Nigro*, 543 F. Supp. 1044 (D.D.C. 1982), remanded 711 F.2d 420, cert. denied, 464 U.S. 846, 104 S. Ct. 149, 78 L. Ed. 2d 139 (1983).

Admission decision subject to review by Supreme Court. — A decision of the Court of Appeals respecting admission to the bar is subject to review by petitioning the Supreme Court of the United States for a writ of certiorari. *Powell v. Nigro*, 543 F. Supp. 1044 (D.D.C. 1982), remanded 711 F.2d 420, cert. denied, 464

U.S. 846, 104 S. Ct. 149, 78 L. Ed. 2d 139 (1983).

United States District Courts have no authority to review final determinations of the District of Columbia Court of Appeals in judicial proceedings. Review of such determinations can be obtained only in the Supreme Court. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).

Proceedings before District of Columbia Court of Appeals involving "judicial inquiry." — Proceedings before the District of Columbia Court of Appeals, pertaining to requests for waivers of a bar admission rule, involved a "judicial inquiry" in which the court was called upon to investigate, declare, and enforce liabilities as they stood on present or past facts and under laws supposed already to exist. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).

United States District Court lacks jurisdiction over complaints requiring review of final judicial decision of highest state court. — Respondents' complaints that the District of Columbia Court of Appeals acted arbitrarily and capriciously in denying their petitions for waiver of bar admission rule, requiring applicants to have graduated from an approved law school, and that the court acted unreasonably and discriminatorily in denying their petitions in view of its former policy of granting waivers to graduates of unaccredited law schools required the United States District Court to review a final judicial decision of the highest court of a jurisdiction in a particular case. Because allegations are inextricably intertwined with the District of Columbia Court of Appeals' decisions, in judicial proceedings to deny the respondents' petitions, the District Court does not have jurisdiction over those complaints. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).

Interpretation of word "admission." — The only rational interpretation of the word "admission" in this section is "original admission." In *re Kerr*, App. D.C., 424 A.2d 94 (1980), overruled on other grounds, In *re McBride*, App. D.C., 602 A.2d 626 (1992).

Standard not met. — A candidate for admission to the bar who knowingly pleads guilty to the crime of receiving stolen goods and does not honor his commitments and obligations fails to carry his required burden of demonstrating that he is qualified for admission to the bar. In *re Heller*, App. D.C., 333 A.2d 401, cert. denied, 423 U.S. 840, 96 S. Ct. 70, 46 L. Ed. 2d 59 (1975).

Examination has rational relationship to practice of law. — The Committee on Admissions' essay-type examination has a ra-

tional relationship to practice of law, and the passing of such an examination is a valid prerequisite to admission to the bar. *Harper v. District of Columbia Comm. on Admissions*, App. D.C., 375 A.2d 25 (1977).

And is not discriminatory. — The Committee on Admission's essay-type questions in the bar examination were shown not to have been constructed, administered or graded in discriminatory manner. *Harper v. District of Columbia Comm. on Admissions*, App. D.C., 375 A.2d 25 (1977).

Jurisdiction to enjoin unauthorized practice. — The Court of Appeals has jurisdiction to entertain a petition for an order enjoining an individual and a corporation from practicing law in the District by giving advice relative to patents. In *re Amalgamated Dev. Co.*, App. D.C., 375 A.2d 494, cert. denied, 434 U.S. 924, 98 S. Ct. 403, 54 L. Ed. 2d 282 (1977).

Where one is engaged in the unauthorized practice of law before the court, the court has the power and responsibility to enjoin further activities which constitute the unauthorized practice of law. *J.H. Marshall & Assocs. v. Burleson*, App. D.C., 313 A.2d 587 (1973).

Statutory authority over admission of attorneys to bar does not include authority over readmission cases. — Subsection (a) gives Court of Appeals plenary authority over the original admission of attorneys to the bar; no statute gives it plenary authority over readmission cases. In *re Manville*, App. D.C., 538 A.2d 1128 (1988).

Activities held to constitute unauthorized practice of law. — An individual was engaged in the unauthorized practice of law when, not being an attorney and not being registered in Patent Office, he advised investors as to patentability, prepared patent applications, advised clients of what action to take after rejection, and prepared and filed amendments. In *re Amalgamated Dev. Co.*, App. D.C., 375 A.2d 494, cert. denied, 434 U.S. 924, 98 S. Ct. 403, 54 L. Ed. 2d 282 (1977).

A collection agency may not solicit claims for legal action on a contingent fee basis, may not advise the creditor when to start suit, and may not employ an attorney to institute and carry on the litigation under the control and direction of the agency in order to enforce the legal rights of the creditor for to do so constitutes the unauthorized practice of law. *J.H. Marshall & Assocs. v. Burleson*, App. D.C., 313 A.2d 587 (1973).

Including or excluding lay representation before agencies within "practice of law." — While Court of Appeals is empowered to define the practice of law so that it either excludes or includes lay representation before agencies, it is also true that such an undertaking implicates important public policy questions. *Brookens v. Committee on Unauthorized*

Practice of Law, App. D.C., 538 A.2d 1120 (1988).

Cited in Kelly Adjustment Co. v. Boyd, App. D.C., 342 A.2d 361 (1975); United States v. Lima, App. D.C., 424 A.2d 113 (1980); Financial

Gen. Bankshares, Inc. v. Metzger, 680 F.2d 768 (D.C. Cir. 1982); In re Manville, App. D.C., 494 A.2d 1289 (1985); In re McBride, App. D.C., 602 A.2d 626 (1992).

§ 11-2502. Censure, suspension, or disbarment for cause.

The District of Columbia Court of Appeals may censure, suspend from practice, or expel a member of its bar for crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or conduct prejudicial to the administration of justice. A fraudulent act or misrepresentation by an applicant in connection with this application or admission is sufficient cause for the revocation by the court of such person's admission. (July 29, 1970, 84 Stat. 521, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2502; June 13, 1994, Pub. L. 103-266, § 1(b)(112), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

Section is codification of inherent power. — This section, by which the Congress conferred on the Court of Appeals the same authority over attorneys as had been accorded the United States District Court theretofore by statute is essentially a codification of the inherent power of the Court of Appeals acquired upon its designation by the Congress as the highest court of the District. In re Keiler, App. D.C., 380 A.2d 119 (1977), overruled on other grounds, App. D.C., 534 A.2d 919 (1987).

D.C. Bar R. XI, § 1 creates and defines scope and duties associated with disciplinary authority. — While this section and § 11-2501(a) create in the Court of Appeals the power to establish rules for managing its bar, it is D.C. Bar R. XI, § 1 that actually creates and defines the scope and duties associated with the disciplinary authority of this court and the Board of Professional Responsibility. In re Wade, App. D.C., 526 A.2d 936 (1987), cert. denied, 484 U.S. 1010, 108 S. Ct. 213, 98 L. Ed. 2d 659 (1988).

Responsibility of Court of Appeals. — The District of Columbia Court of Appeals bears responsibility for disciplining errant bar members. Doe v. Board on Professional Responsibility, 717 F.2d 1424 (D.C. Cir. 1983).

Court order required. — Disbarment, suspension, or censure of any attorney can be made effective only upon an order of the Court of Appeals. In re Dwyer, App. D.C., 399 A.2d 1 (1979).

"Conduct prejudicial to the administration of justice" construed. — The prohibition against "conduct prejudicial to the administration of justice" bars not only those activities of an attorney which may cause the tribunal to reach an incorrect decision but also conduct which taints the decisionmaking process. In re Keiler, App. D.C., 380 A.2d 119 (1977), overruled on other grounds, App. D.C., 534 A.2d 919 (1987).

Standard is not unconstitutionally vague. — The rule providing that a lawyer shall not engage in conduct prejudicial to the administration of justice is not a new standard but a restatement of a previously existing one, and is not unconstitutionally vague. In re Keiler, App. D.C., 380 A.2d 119 (1977), overruled on other grounds, App. D.C., 534 A.2d 919 (1987).

Public censure justified. — Simple commingling of client's funds in attorney's checking account without misappropriation warranted a recommendation of public censure. In re Ingram, App. D.C., 584 A.2d 602 (1991).

Conduct pertaining to the making of illegal campaign contributions and involving deceit and misrepresentation justifies a 1-year suspension from the practice of law. In re Wild, App. D.C., 361 A.2d 182 (1976).

Cited in Financial Gen. Bankshares, Inc. v. Metzger, 680 F.2d 768 (D.C. Cir. 1982); In re Shillaire, App. D.C., 549 A.2d 336 (1988); In re Greenspan, App. D.C., 578 A.2d 1156 (1990); In re Tinsley, App. D.C., 582 A.2d 1192 (1990); In re Santana, App. D.C., 583 A.2d 1011 (1990); In re McBride, App. D.C., 602 A.2d 626 (1992); In re Kerr, App. D.C., 611 A.2d 551 (1992).

§ 11-2503. Disbarment upon conviction of crime; procedure for censure, suspension, or disbarment.

(a) When a member of the bar of the District of Columbia Court of Appeals is convicted of an offense involving moral turpitude, and a certified copy of the conviction is presented to the court, the court shall, pending final determination of an appeal from the conviction, suspend the member of the bar from practice. Upon reversal of the conviction the court may vacate or modify the suspension. If a final judgment of conviction is certified to the court, the name of the member of the bar so convicted shall be struck from the roll of the members of the bar and such person shall thereafter cease to be a member. Upon the granting of a pardon to a member so convicted, the court may vacate or modify the order of disbarment.

(b) Except as provided in subsection (a), a member of the bar may not be censured, suspended, or expelled under this chapter until written charges, under oath, against that member have been presented to the court, stating distinctly the grounds of complaint. The court may order the charges to be filed in the office of the clerk of the court and shall fix a time for hearing thereon. Thereupon a certified copy of the charges and order shall be served upon the member personally, or if it is established to the satisfaction of the court that personal service cannot be had, a certified copy of the charges and order shall be served upon that member by mail, publication, or otherwise as the court directs. After the filing of the written charges, the court may suspend the person charged from practice at its bar pending the hearing thereof. (July 29, 1970, 84 Stat. 521, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2503; June 13, 1994, Pub. L. 103-266, §§ 1(b)(113), (114), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

This section is mandatory in its terms. In re Colson, App. D.C., 412 A.2d 1160 (1979).

Conviction of a crime involving moral turpitude ultimately results in disbarment which is both mandatory and permanent in all cases except those in which a pardon is granted. In re Phillips, App. D.C., 452 A.2d 345 (1982).

Responsibility of Court of Appeals. — The District of Columbia Court of Appeals bears responsibility for disciplining errant bar members. Doe v. Board on Professional Responsibility, 717 F.2d 1424 (D.C. Cir. 1983).

Court order required. — Disbarment, suspension, or censure of an attorney can be made effective only upon an order of the Court of Appeals. In re Dwyer, App. D.C., 399 A.2d 1 (1979).

Disciplinary proceedings are quasi-criminal in nature and an attorney who is the subject of such proceedings is entitled to procedural due process safeguards. In re Williams, App. D.C., 464 A.2d 115 (1983), modified, App. D.C., 513 A.2d 793 (1986).

Denial of evidentiary hearing did not violate due process. — Subsection (a) re-

quires a threshold determination of whether the crime of which attorney has been convicted involved moral turpitude, as this section subjects an attorney to disbarment because of the conviction as distinct from the commission of an act involving moral turpitude. Consequently, although subsection (a) in effect makes such a hearing necessary so that the attorney would have an opportunity to be heard, the determination that a conviction involved moral turpitude ends the inquiry, and where attorney was convicted for unlawful possession with the intent to distribute marijuana, a crime involving moral turpitude, his due process rights were not violated by the denial of an evidentiary hearing. In re Campbell, App. D.C., 572 A.2d 1059 (1990).

Threshold focus of this section is on the type of crime committed rather than on the factual context surrounding the actual commission of the offense. In re Colson, App. D.C., 412 A.2d 1160 (1979).

An attorney is subject to disbarment under this section for his conviction of a crime involving moral turpitude, not for his commission of an act involving moral turpitude. In re Colson, App. D.C., 412 A.2d 1160 (1979).

Procedural requirements which apply in disciplinary proceedings are analogous to those of other "contested cases." In *re Williams*, App. D.C., 464 A.2d 115 (1983), modified, App. D.C., 513 A.2d 793 (1986).

Service of charges not perfected. — When certified or registered mail serves as the basis for attempted service of the charges, as required by this section, and bar counsel has knowledge that the charges so served have not reached the attorney, the statutorily mandated service plainly has not been perfected. Without more, the provision of D.C. Bar Rule XI, § 7 and Board Rule 7.5, providing that the charges are deemed admitted, may not be invoked. In *re Washington*, App. D.C., 513 A.2d 245 (1986).

Burden of proving charges rests with Bar Counsel. In *re Williams*, App. D.C., 464 A.2d 115 (1983), modified, App. D.C., 513 A.2d 793 (1986).

Term "moral turpitude" connotes fraudulent or dishonest intent when applied in the context of attorney misconduct. In *re Willcher*, App. D.C., 447 A.2d 1198 (1982).

Offense involving moral turpitude. — A crime in which an intent to defraud is an essential element is a crime involving moral turpitude per se. In *re Bond*, App. D.C., 519 A.2d 165 (1986).

Specific intent to defraud is required for convictions under the federal mail and wire fraud statutes, and the fraud must be active rather than constructive. Thus, where respondent has been convicted of at least two offenses "involving moral turpitude," his disbarment is mandated by the statute. In *re Bond*, App. D.C., 519 A.2d 165 (1986).

Receiving an illegal gratuity by accepting moving services from a trucking firm in connection with the transfer of his household goods from one house to another was an offense involving moral turpitude. In *re Campbell*, App. D.C., 522 A.2d 892 (1987).

Attorney's violation of a provision of the National Stolen Property Act prohibiting interstate transportation in furtherance of fraud, 18 U.S.C. § 2314, involved moral turpitude per se requiring disbarment under subsection (a) of this section. In *re Vaccaro*, App. D.C., 539 A.2d 1094 (1988).

The ultimate issue of moral turpitude is one of law rather than of fact. In *re Shillaire*, App. D.C., 549 A.2d 336 (1988).

Obstruction of justice inherently involves moral turpitude. In *re Shillaire*, App. D.C., 549 A.2d 336 (1988) (but see *re Wilkens*, App. D.C., 649 A.2d 557 (1994)).

Threatening a witness, which is closely related to obstruction of justice, is such conduct that, even when engaged in by a layman, involves "moral turpitude." In *re Shillaire*, App. D.C., 549 A.2d 336 (1988) (but see *re Wilkens*, App. D.C., 649 A.2d 557 (1994)).

A conviction under the federal mail fraud statute is a conviction of a crime involving moral turpitude. In *re Krown*, App. D.C., 573 A.2d 786 (1990).

Crimes of mail fraud involved moral turpitude per se. In *re Juron*, App. D.C., 649 A.2d 836 (1994).

Conviction under the federal wire fraud statute is conviction for crimes involving moral turpitude per se, and in light of his conviction for wire fraud, attorney's disbarment was mandated by subsection (a). In *re Kuang Hsung J. Chuang*, App. D.C., 575 A.2d 725 (1990).

A conviction for conspiracy to commit wire fraud inherently involves moral turpitude. In *re Lobar*, App. D.C., 632 A.2d 110 (1993).

Conviction under 18 U.S.C. § 1505 for obstruction of justice of administrative proceedings involves moral turpitude, and requires disbarment under subsection (a) of this section. In *re Laurins*, App. D.C., 576 A.2d 1351 (1990) (but see *re Wilkens*, App. D.C., 649 A.2d 557 (1994)).

Convictions under the federal bank fraud statute, 18 U.S.C. § 1344, and for second-degree fraud under § 22-3821 include, as an essential element, an intent to defraud, inherently involve moral turpitude requiring disbarment. In *re Rosenbleet*, App. D.C., 592 A.2d 1036 (1991).

Conviction of possession with intent to distribute cocaine, a crime of moral turpitude, warrants disbarment. In *re Mendes*, App. D.C., 598 A.2d 168 (1991).

Conspiracy to defraud the United States in violation of 18 U.S.C. § 371 and wire fraud in violation of 18 U.S.C. § 1343 constitute offenses involving moral turpitude warranting disbarment. In *re McGough*, App. D.C., 605 A.2d 605 (1992).

The crime of federal bank fraud, committed in violation of 18 U.S.C. § 1344(a), is a crime involving moral turpitude. In *re Campbell*, App. D.C., 635 A.2d 933 (1994).

Grand larceny as defined by the Commonwealth of Virginia is a crime involving moral turpitude per se, requiring disbarment. In *re Slater*, App. D.C., 627 A.2d 508 (1993).

Forgery and grand larceny involve moral turpitude per se. In *re Sluys*, App. D.C., 632 A.2d 734 (1993).

Attorney's conviction of 18 U.S.C. § 1341, which concerns use of the mails to defraud, involves moral turpitude per se; therefore, the proper sanction was disbarment. In *re Fox*, App. D.C., 627 A.2d 511 (1993).

The offense of mail fraud involves moral turpitude per se. In *re Zimmer*, App. D.C., 637 A.2d 103 (1994).

Offering a false instrument for filing in the first degree, in violation of New York law is a crime involving moral turpitude. In *re Mirrer*, App. D.C., 632 A.2d 117 (1993).

Some offenses inherently involve moral turpitude. For such offenses it is not necessary to provide a hearing to consider the specifics of the conduct involved; the Board on Professional Responsibility's determination of the nature of the conviction is sufficient. In re Roberson, App. D.C., 429 A.2d 530 (1981).

Violation of § 11-2606(b) inherently involves moral turpitude. — Since the unlawful solicitation of money from an indigent client by an attorney appointed under the Criminal Justice Act, in violation of § 11-2606(b), is always a fraud on the client who is entitled to legal services free of charge and on the judicial system, a violation of § 11-2606(b) falls squarely within the definition of an offense inherently involving moral turpitude, thus warranting disbarment under subsection (a) of this section. In re Willcher, App. D.C., 447 A.2d 1198 (1982).

Conspiracy to commit offenses involving moral turpitude. — Where the object of a conspiracy is a crime involving moral turpitude, a conviction for conspiracy to commit the underlying offense is itself a crime inherently involving moral turpitude. In re Lobar, App. D.C., 632 A.2d 110 (1993).

Conviction of conspiracy on charges of defrauding the United States inherently involves moral turpitude since proof of intent to defraud is necessary for the conviction. In re Lobar, App. D.C., 632 A.2d 110 (1993).

Moral turpitude per se. — Once a final determination has been made by the Court of Appeals that a crime inherently involves moral turpitude, that determination shall be applicable to future cases concerning the same felony; the moral turpitude per se ruling shall be consistently applied and not reexamined except by the Court of Appeals en banc. In re McBride, App. D.C., 602 A.2d 626 (1992).

If the Court of Appeals has previously held that the crime at issue inherently involves moral turpitude, then the Board of Professional Responsibility is bound by that holding; but if it has not so held, the Board may consider briefs and arguments on the issue of whether the crime involves moral turpitude. In re Hopmayer, App. D.C., 602 A.2d 655 (1992).

Crimes can involve moral turpitude per se without involving an intent to defraud. In re McBride, App. D.C., 602 A.2d 626 (1992).

Acts of moral turpitude and conviction of crime distinguished. — Although acts involving moral turpitude are treated as serious transgressions under Rule 11, they may justify disbarment but do not always require it. However, subsection (a) of this section addresses what Congress and the courts have typically considered as the gravest evidence of delinquency — the conviction of a crime involving moral turpitude, which requires disbar-

ment, regardless of any mitigating factors. In re Hopmayer, App. D.C., 625 A.2d 290 (1993).

Perjury and conspiracy to defraud IRS involve moral turpitude. — Crimes of perjury and conspiracy to defraud the IRS are both offenses involving moral turpitude so that attorney convicted of these was permanently disbarred. In re Meisner, App. D.C., 471 A.2d 269 (1984).

Aiding submission of fraudulent federal tax returns involves moral turpitude. — An attorney's conviction of 2 felony counts of knowingly aiding and assisting his clients in submitting fraudulent and false federal tax returns constituted a crime involving moral turpitude, which necessitated mandatory disbarment under subsection (a) of this section. In re McConnell, App. D.C., 502 A.2d 454 (1985).

Conviction for false pretenses involves moral turpitude. — Conviction for false pretenses under former § 22-1301 constituted conviction of a crime involving moral turpitude for the purposes of this section. In re Anderson, App. D.C., 474 A.2d 145 (1984).

Conviction for child pornography involves moral turpitude. — Conviction for distribution of child pornography was for a crime involving moral turpitude and warranted disbarment. In re Wolff, App. D.C., 490 A.2d 1118 (1985), *aff'd*, App. D.C., 511 A.2d 1047 (1986).

No conviction of a misdemeanor may be deemed conviction of a crime involving moral turpitude per se, even though that misdemeanor may be properly characterized as a "serious crime," and may be held to involve moral turpitude on the facts of the case. In re McBride, App. D.C., 602 A.2d 626 (1992).

Misdemeanors can be "serious crimes" warranting immediate suspension pending resolution of disciplinary proceedings and misdemeanors can involve moral turpitude. In re McBride, App. D.C., 602 A.2d 626 (1992).

Board must adhere to ruling that crime involves moral turpitude. — Once the Court of Appeals has made a final determination that a crime involves moral turpitude, the Board on Professional Responsibility must adhere to that ruling. In re Roberson, App. D.C., 429 A.2d 530 (1981).

Difference in sentencing for narcotic and nonnarcotic drugs insignificant for purposes of assessing moral turpitude. — Although the board acknowledged that marijuana is listed by the Drug Enforcement Administration as a Schedule I nonnarcotic drug and carries a lesser penalty than do narcotic drugs such as cocaine or heroin, it reasoned that the difference in sentencing for narcotic and nonnarcotic drugs is insignificant for purposes of assessing moral turpitude, because marijuana distribution is still treated as a

serious criminal offense. In *re Campbell*, App. D.C., 572 A.2d 1059 (1990).

Obstruction of justice involves moral turpitude. — Obstruction of justice is a crime involving moral turpitude per se. In *re Schwartz*, App. D.C., 619 A.2d 39 (1993) (but see *In re Wilkens*, App. D.C., 649 A.2d 557 (1994)).

Misdemeanor obstruction of justice conviction not involving moral turpitude. — Respondent's conduct, which resulted in his conviction of the misdemeanor offense of obstructing justice did not involve moral turpitude in light of the facts established by the evidence. In *re Wilkins*, App. D.C., 649 A.2d 557 (1994).

Forgery and uttering involve moral turpitude. — Forgery and uttering are crimes involving moral turpitude per se. In *re Schwartz*, App. D.C., 619 A.2d 39 (1993) (but see *In re Wilkens*, App. D.C., 649 A.2d 557 (1994)).

Criminal facilitation of felony in Guam involves moral turpitude. — Conviction in Guam for criminal facilitation of a felony of the second degree, although a misdemeanor in Guam, involved moral turpitude and warranted disbarment. In *re Untalan*, App. D.C., 619 A.2d 978 (1993).

Conviction for theft by deception involves moral turpitude. — Respondent's conviction for theft by deception was a per se offense involving moral turpitude under subsection (a) of this section. In *re Youmans*, App. D.C., 617 A.2d 534 (1993).

Bribery involves moral turpitude. — The crime of bribery inherently involves moral turpitude and therefore triggers automatic disbarment from the practice of law in the District of Columbia. In *re Glover-Tonwe*, App. D.C., 626 A.2d 1387 (1993).

Moral turpitude not found. — Attorney's willful failure to pay taxes under 26 U.S.C. § 7203 and willful tax evasion under 26 U.S.C. § 7201 did not involve moral turpitude within the meaning of subsection (a). In *re Shorter*, App. D.C., 570 A.2d 760 (1990).

The offense of filing a false tax return as proscribed by the U.S. Code does not involve moral turpitude per se, and an attorney is therefore not required to be disbarred under subsection (a) of this section. Without examining the facts of a respondent's conduct, the court cannot classify the filing of a false tax return as an offense involving moral turpitude. In *re Kerr*, App. D.C., 611 A.2d 551 (1992).

Hearing required for determination of moral turpitude. — As for the attorney's opportunity to be heard, subsection (a) of this section in effect makes such a hearing necessary and even though the statutory language is mandatory in nature, a determination must be

made as to whether the offense giving rise to the conviction involved moral turpitude. In *re Colson*, App. D.C., 412 A.2d 1160 (1979).

Disbarment required upon finality of conviction and finding of moral turpitude.

— Where an attorney's conviction became final as soon as he was sentenced upon his plea, the finality of the conviction coupled with the Board on Professional Responsibility's finding of moral turpitude required the disbarment of respondent as mandated by the clear language of this section. In *re Colson*, App. D.C., 412 A.2d 1160 (1979).

Right to petition for reinstatement upon disbarment. — All attorneys disbarred upon conviction of a crime involving moral turpitude shall no longer be deemed disbarred for life, and such attorneys, like all others who have been disbarred, shall be entitled to petition for reinstatement after 5 years of disbarment. In *re McBride*, App. D.C., 602 A.2d 626 (1992).

Conviction not subject to collateral attack in disbarment proceeding. — A judgment of conviction in federal court for a felony is binding upon the District Court and the Circuit Court of Appeals, and is not subject to collateral attack in a disbarment proceeding. *Laughlin v. United States*, 474 F.2d 444 (1972), cert. denied, 412 U.S. 941, 93 S. Ct. 2784, 37 L. Ed. 2d 402 (1973).

Collateral effects in other jurisdictions of disbarment in District. — Disbarment in the District of Columbia may collaterally affect an attorney's standing in other state bars and prejudice future applications for admission to bar associations in other jurisdictions. In *re Phillips*, App. D.C., 452 A.2d 345 (1982).

Alcoholism as a mitigating factor. — Allegations that defendant's crime was the result of his alcoholism, which caused him to appear unable to distinguish between acceptable and unacceptable behavior, or to be able to control his conduct, and before pleading guilty to theft he had entered and successfully completed an inpatient alcohol treatment program, were sufficient to raise a question whether alcoholism should be considered as a factor in mitigation of the disciplinary sanction to be imposed. In *re Hopmayer*, App. D.C., 602 A.2d 655 (1992).

The issue of whether alcoholism can ever mitigate disbarment under this section should be decided in the first instance by the Board of Professional Responsibility, after briefing by the parties. In *re Hopmayer*, App. D.C., 602 A.2d 655 (1992).

Suspension justified. — Conduct pertaining to the making of illegal campaign contributions and involving deceit and misrepresentation justifies a 1-year suspension from the practice of law. In *re Wild*, App. D.C., 361 A.2d 182 (1976).

Rules for admission and readmission of attorneys who are felons may be different.

— Court of Appeals can adopt a rule for the admission of applicants who have committed felonies that differs from the rule it employs in connection with the application for readmission of a former attorney who was disbarred for committing a felony. *In re Manville*, App. D.C., 538 A.2d 1128 (1988).

Disbarment justified. — Disbarment was required for attorney convicted of grand larceny. *In re Boyd*, App. D.C., 593 A.2d 183 (1991).

Respondent who was convicted of at least one offense inherently involving moral turpitude (crime of federal bank fraud) was disbarred pursuant to subsection (a). *In re Campbell*, App. D.C., 635 A.2d 933 (1994).

Attorney was disbarred based upon his guilty plea to one count of mail fraud, in violation of 18 U.S.C. § 1341, and one count of aiding and abetting a misapplication of bank funds, in

violation of 18 U.S.C. § 656. *In re Zimmer*, App. D.C., 637 A.2d 103 (1994).

Readmission after five years. — When an attorney is disbarred for any reason, readmission may be sought after five years. *In re Novick*, App. D.C., 619 A.2d 514 (1993).

Cited in *Financial Gen. Bankshares, Inc. v. Metzger*, 680 F.2d 768 (D.C. Cir. 1982); *In re Dorsey*, App. D.C., 469 A.2d 1246 (1983); *In re Hutchinson*, App. D.C., 474 A.2d 842 (1984); *In re Nace*, App. D.C., 490 A.2d 1120 (1985); *In re Hutchinson*, App. D.C., 534 A.2d 919 (1987); *Salama v. District of Columbia Bd. of Medicine*, App. D.C., 578 A.2d 693 (1990); *In re Solerwitz*, App. D.C., 601 A.2d 1083 (1992); *In re White*, App. D.C., 605 A.2d 47 (1992); *In re Mandel*, App. D.C., 605 A.2d 61 (1992); *In re Cooper*, App. D.C., 622 A.2d 1105 (1993); *In re Venable*, App. D.C., 641 A.2d 853 (1993); *In re Milton*, App. D.C., 642 A.2d 839 (1994); *In re Gardner*, App. D.C., 650 A.2d 693 (1994).

§ 11-2504. Censure, suspension, or disbarment by other courts.

The Federal courts in the District of Columbia and the Superior Court may censure, suspend, or expel an attorney from the practice at their respective bars, for a crime involving moral turpitude, or professional misconduct, or conduct prejudicial to the administration of justice. If an attorney is expelled from practice under this section, the court expelling that attorney shall notify the other Federal courts in the District of Columbia and the District of Columbia Court of Appeals of the action taken. (July 29, 1970, 84 Stat. 521, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2504; June 13, 1994, Pub. L. 103-266, § 1(b)(115), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

Cited in *Roos v. LaPrade*, App. D.C., 444 A.2d 950 (1982).

CHAPTER 26. REPRESENTATION OF INDIGENTS IN CRIMINAL CASES.

Sec.

- 11-2601. Plan for furnishing representation of indigents in criminal cases.
- 11-2602. Appointment of counsel.
- 11-2603. Duration and substitution of appointments.
- 11-2604. Payment for representation.

Sec.

- 11-2605. Services other than counsel.
- 11-2606. Receipt of other payments.
- 11-2607. Preparation of Budget.
- 11-2608. Authorization of appropriations.
- 11-2609. Authority of Council.

§ 11-2601. Plan for furnishing representation of indigents in criminal cases.

The Joint Committee on Judicial Administration shall place in operation, within ninety days after the effective date of this chapter, in the District of Columbia a plan for furnishing representation to any person in the District of Columbia who is financially unable to obtain adequate representation —

(1) who is charged with a felony, or misdemeanor, or other offense for which the sixth amendment to the Constitution requires the appointment of counsel or for whom, in a case in which such person faces loss of liberty, any law of the District of Columbia requires the appointment of counsel;

(2) who is under arrest, when such representation is required by law;

(3) who is charged with violating a condition of probation or parole in custody as a material witness, or seeking collateral relief, as provided in —

(A) Section 23-110 of the District of Columbia Code (remedies on motion attacking sentence),

(B) Chapter 7 of title 23 of the District of Columbia Code (extradition and fugitives from justice),

(C) Chapter 19 of title 16 of the District of Columbia Code (habeas corpus),

(D) Section 928 of the Act of March 8, 1901 (D.C. Code, sec. 24-302) (commitment of mentally ill person while serving sentence);

(4) who is subject to proceedings pursuant to chapter 5 of title 21 of the District of Columbia Code (hospitalization of the mentally ill);

(5) who is a juvenile and alleged to be delinquent or in need of supervision.

Representation under the plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. The plan shall include a provision for private attorneys, attorneys furnished by the Public Defender Service, and attorneys and qualified students participating in clinical programs. (1973 Ed., § 11-2601; Sept. 3, 1974, 88 Stat. 1090, Pub. L. 93-412, § 2; June 13, 1994, Pub. L. 103-266, § 1(b)(116), 108 Stat. 713.)

Cross references. — As to representation of indigents by Public Defender Service, see § 1-2702.

As to right to counsel in Family Division proceedings, see § 16-2304.

Section references. — This section is referred to in § 11-2607.

Effect of amendments. — Public Law 103-266 amended (1) to remove gender-specific references.

Appropriations approved. — Public Law 103-334, 108 Stat. 2577, the District of Columbia Appropriations Act, 1995, provided that funds appropriated for expenses under § 11-2601 et seq. for the fiscal year ending September 30, 1995, shall be available for obligations incurred under the Act in each fiscal year since inception in fiscal year 1975.

Underlying purpose of this section is to insure that persons charged with crimes in the

District of Columbia who are financially unable to obtain an adequate defense are provided with legal representation. *Thompson v. District of Columbia*, App. D.C., 407 A.2d 678 (1979).

Implementation plan is mandatory in application; that is, in all criminal cases specified under this section an accused who appears in court without counsel shall be informed that he has the right to be represented by appointed counsel if he is financially unable to obtain counsel, and it is the duty of the court or the Criminal Justice Act office to determine whether a person appearing without counsel is eligible for representation. *Gregory v. United States*, App. D.C., 393 A.2d 132 (1978).

Appointment of counsel not mandatory. — On its face, this section appears to be mandatory; however, if this section is read together with § 11-2602, it becomes apparent that mandatory appointment of counsel for every defendant in every prosecution was not what Congress intended. Section 11-2602 prescribes separate procedures for two different situations, the first where counsel must be assigned, and the second where counsel may be assigned in the exercise of the discretion of the court. *Olevsky v. District of Columbia*, App. D.C., 548 A.2d 78 (1988).

Either the court or its authorized representative may make findings of eligibility. *Gregory v. United States*, App. D.C., 393 A.2d 132 (1978).

Subparagraph (3)(A) of this section incorporates, implicitly, an “interests of justice” standard for trial court scrutiny of a prisoner’s request for legal assistance. *Jenkins v. United States*, App. D.C., 548 A.2d 102 (1988).

Amount of appointee’s compensation. — The judges of the Superior Court administer this chapter and determine the amount of com-

pensation each appointee will receive. *Thompson v. District of Columbia*, App. D.C., 407 A.2d 678 (1979).

Appeals. — Because the request for counsel and a § 23-110 motion are part of the same package, the question in every case is not whether the denial of the request for counsel is appealable as a final order in its own right but whether it is appealable as a collateral order before entry of a final order on the § 23-110 motion itself. *Jenkins v. United States*, App. D.C., 548 A.2d 102 (1988).

Postconviction or collateral relief. — There is no constitutional right to appointment of counsel to develop and pursue postconviction relief. Nor is there commonly a statutory basis entitling a criminal defendant whose conviction has been affirmed on direct appeal to have counsel appointed to pursue collateral relief. *Jenkins v. United States*, App. D.C., 548 A.2d 102 (1988).

Cited in *Harling v. United States*, App. D.C., 387 A.2d 1101 (1978); *In re A.S.W.*, App. D.C., 391 A.2d 1385 (1978); *Pierce v. United States*, App. D.C., 402 A.2d 1237 (1979); *Willcher v. United States*, App. D.C., 408 A.2d 67 (1979); *In re Willcher*, App. D.C., 447 A.2d 1198 (1982); *Marshall v. District of Columbia*, App. D.C., 458 A.2d 28 (1982); *Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie*, 725 F.2d 695 (D.C. Cir. 1984); *Stanton v. Chase*, App. D.C., 497 A.2d 1066 (1985); *Cloutterbuck v. Cloutterbuck*, App. D.C., 556 A.2d 1082 (1989); *Thompson v. Thompson*, App. D.C., 559 A.2d 311 (1989); *Robinson v. United States*, App. D.C., 565 A.2d 964 (1989); *FTC v. Superior Court Trial Lawyers Ass’n*, 293 U.S. 411, 110 S. Ct. 768, 107 L. Ed. 2d 851 (1990); *Doe v. United States*, App. D.C., 583 A.2d 670 (1990); *Lee v. United States*, App. D.C., 597 A.2d 1333 (1991); *In re Mitchell*, 121 WLR 541 (Super. Ct. 1993).

§ 11-2602. Appointment of counsel.

Counsel furnishing representation under the plan shall in every case be selected from panels of attorneys designated and approved by the courts. In all cases where a person faces a loss of liberty and the Constitution or any other law requires the appointment of counsel, the court shall advise the defendant or respondent that he or she has the right to be represented by counsel and that counsel will be appointed to represent the defendant or respondent if such person is financially unable to obtain counsel. Unless the defendant or respondent waives representation by counsel, the court, if satisfied after appropriate inquiry that the defendant or respondent is financially unable to obtain counsel, shall appoint counsel to represent that person. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The court shall appoint separate counsel for defendants or respondents having interests that cannot properly be represented by the same counsel, or when other good cause is shown. In all

cases covered by this Act where the appointment of counsel is discretionary, the defendant or respondent shall be advised that counsel may be appointed to represent the defendant or respondent if such person is financially unable to obtain counsel, and the court shall in all such cases advise the defendant or respondent of the manner and procedures by which such person may request the appointment of counsel. (1973 Ed., § 11-2602; Sept. 3, 1974, 88 Stat. 1090, Pub. L. 93-412, § 2; June 13, 1994, Pub. L. 103-266, §§ 1(b)(117)-(119), 108 Stat. 713.)

Section references. — This section is referred to in § 11-2603.

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

References in text. — “This Act,” referred to in the last sentence of this section, appears in the original but probably should read “this chapter.”

Appointment of counsel under this section is judicial act, and judicial immunity protects the trial judges from tort claims arising from actions taken pursuant to these appointments. *Stanton v. Chase*, App. D.C., 497 A.2d 1066 (1985).

Criteria for appointment of counsel. — In order to demonstrate a need for the appointment of counsel to pursue collateral relief, a petitioner usually must satisfy the same criteria that would entitle the petitioner to a hearing on a § 23-110 motion under *Pettaway v. United States*, 390 A.2d 981, 984 (D.C. 1978); under *Pettaway*, a prisoner is not entitled to a hearing on a § 23-110 motion if the motion: (1) is “palpably incredible” (though not merely ‘improbable’), or (2) “fails to state a claim,” i.e., the assertions, even if true, would not entitle the prisoner to relief under § 23-110, or (3) is “vague and conclusory,” i.e., the “prisoner does not present a factual foundation in some detail.” *Doe v. United States*, App. D.C., 583 A.2d 670 (1990).

Appointment of counsel not mandatory. — On its face, § 11-2601 appears to be mandatory; however, if § 11-2601 is read together with this section it becomes apparent that mandatory appointment of counsel for every defendant in every prosecution was not what Congress intended. This section prescribes separate procedures for two different situations, the first where counsel must be assigned, and the second where counsel may be assigned in the exercise of the discretion of the court.

Olevsky v. District of Columbia, App. D.C., 548 A.2d 78 (1988).

Events triggering the right to counsel. — The possibility of imprisonment as a punishment for eventual violation of a civil protection order is too remote as of the time the order is entered to trigger a right to counsel. *Cloutterbuck v. Cloutterbuck*, App. D.C., 556 A.2d 1082 (1989).

Sentence not determinative of right to counsel. — Given the remedial character of the Criminal Justice Act, it was not the intent of Congress that the right to counsel should depend on the sentence eventually imposed by the trial judge, or that the judge should be permitted to dispense with providing legal representation for a poor defendant after the fact, by not sentencing him to prison. *Olevsky v. District of Columbia*, App. D.C., 548 A.2d 78 (1988).

Multiple convictions. — Where an indigent defendant is convicted in a single trial of several offenses, and was deprived of his right to have counsel appointed with respect to one or more of them, then all the convictions are subject to reversal. *Olevsky v. District of Columbia*, App. D.C., 548 A.2d 78 (1988).

Postconviction relief. — Since neither the constitution nor any other law requires appointment of counsel for purposes of pursuing § 23-110 relief, this section makes clear that any appointment of counsel for that purpose is entrusted to the sound discretion of the trial court. *Jenkins v. United States*, App. D.C., 548 A.2d 102 (1988); *Doe v. United States*, App. D.C., 583 A.2d 670 (1990).

Cited in *In re A.S.W.*, App. D.C., 391 A.2d 1385 (1978); *Gregory v. United States*, App. D.C., 393 A.2d 132 (1978); *Willcher v. United States*, App. D.C., 408 A.2d 67 (1979); *Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie*, 725 F.2d 695 (D.C. Cir. 1984); *Lee v. United States*, App. D.C., 597 A.2d 1333 (1991).

§ 11-2603. Duration and substitution of appointments.

A person for whom counsel is appointed shall be represented at every stage of the proceedings from such person’s initial appearance before the court through appeals, including ancillary matters appropriate to the proceedings. If

at any time after the appointment of counsel the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in section 2606 of this chapter, as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the court finds that the person is financially unable to pay counsel whom such person had retained, it may appoint counsel as provided in section 2602, and authorize payment as provided in section 2604, as the interests of justice may dictate. The court may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings. (1973 Ed., § 11-2603; Sept. 3, 1974, 88 Stat. 1091, Pub. L. 93-412, § 2; June 13, 1994, Pub. L. 103-266, § 1(b)(120), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

Congressional intent. — By this section, Congress intended to give persons tried in the Superior Court for the District of Columbia the same right to appointment of counsel as those persons would have if they had been tried in the United States District Court for the District of Columbia. *Corley v. United States*, App. D.C., 416 A.2d 713, cert. denied, 449 U.S. 1036, 101 S. Ct. 614, 66 L. Ed. 2d 499 (1980).

Federal statute used for guidance in construction of section. — The District of Columbia Court of Appeals will look to the interpretation of 18 U.S.C. § 3006A for guidance in determining the construction of this section since it was based on that federal provision. *Corley v. United States*, App. D.C., 416 A.2d 713, cert. denied, 449 U.S. 1036, 101 S. Ct. 614, 66 L. Ed. 2d 499 (1980).

Attorney may not be removed arbitrarily. — Once an attorney is serving under a valid appointment by the court and an attorney-client relationship has been established, the court may not arbitrarily remove the attorney over the objections of both the defendant and his counsel, although gross incompetence or physical incapacity of counsel or contumacious conduct that cannot be cured by a citation for

contempt may justify the court's removal of an attorney even over the defendant's objection. *Harling v. United States*, App. D.C., 387 A.2d 1101 (1978).

Or for mere disagreement over conduct of defense. — Mere disagreement as to the conduct of a defense is not sufficient to permit the removal of any attorney. *Harling v. United States*, App. D.C., 387 A.2d 1101 (1978).

Petition for writ of certiorari covered by section. — The assistance of compensated counsel in preparation of a petition for writ of certiorari is within the intent and coverage of this section's representation "through appeals." *Corley v. United States*, App. D.C., 416 A.2d 713, cert. denied, 449 U.S. 1036, 101 S. Ct. 614, 66 L. Ed. 2d 499 (1980).

Frivolous petition for rehearing en banc. — This section does not compel the court to appoint new appellate counsel to prepare a frivolous petition for a rehearing en banc. *Wise v. United States*, App. D.C., 522 A.2d 898 (1987).

Cited in *In re A.S.W.*, App. D.C., 391 A.2d 1385 (1978); *Willcher v. United States*, App. D.C., 408 A.2d 67 (1979); *Henson v. United States*, App. D.C., 563 A.2d 1096 (1989), cert. denied, 493 U.S. 1083, 110 S. Ct. 1142, 107 L. Ed. 2d 1047 (1990).

§ 11-2604. Payment for representation.

(a) Any attorney appointed pursuant to this chapter shall, at the conclusion of the representation or any segment thereof, be compensated at a fixed rate of \$50 per hour. Such attorney shall be reimbursed for expenses reasonably incurred.

(b) For representation of a defendant before the Superior Court or before the District of Columbia Court of Appeals, as the case may be, the compensation to be paid to an attorney shall not exceed the following maximum amounts:

- (1) \$1300 for misdemeanor cases;
- (2) \$2450 for felony cases; and

(3) \$1300 for post-trial matters if the underlying case was a misdemeanor or \$2450 for post-trial matters if the underlying case was a felony.

(c) Claims for compensation and reimbursement in excess of any maximum amount provided in subsection (b) of this section may be approved for extended or complex representation whenever such payment is necessary to provide fair compensation. Any such request for payment shall be submitted by the attorney for approval by the chief judge of the Superior Court upon recommendation of the presiding judge in the case or, in cases before the District of Columbia Court of Appeals, approval by the chief judge of the Court of Appeals upon recommendation of the presiding judge in the case. A decision shall be made by the appropriate chief judge in the case of every claim filed under this subsection.

(d) A separate claim for compensation and reimbursement shall be made to the Superior Court for representation before that court, and to the District of Columbia Court of Appeals for representation before that court. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished other than before the Superior Court or the District of Columbia Court of Appeals, claims shall be submitted to the Superior Court which shall fix the compensation and reimbursement to be paid.

(e) For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(f) If a person for whom counsel is appointed under this section appeals to the District of Columbia Court of Appeals, such person may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915 (a) of title 28, United States Code. (1973 Ed., § 11-2604; Sept. 3, 1974, 88 Stat. 1091, Pub. L. 93-412, § 2; Jan. 31, 1984, D.C. Law 5-44, § 2, 30 DCR 5411; Aug. 6, 1993, D.C. Law 10-11, § 201, 40 DCR 4007; Sept. 30, 1993, D.C. Law 10-25, § 201, 40 DCR 5489; June 13, 1994, Pub. L. 103-266, § 1(b)(121), 108 Stat. 713.)

Cross references. — As to compensation of attorneys in neglect and termination of parental rights proceedings, see § 16-2326.1.

Section references. — This section is referred to in §§ 6-2506, 11-2603, and 16-2326.1.

Effect of amendments. — Section 201 of D.C. Law 10-25 substituted “at a fixed rate of \$50 per hour” for “at a rate fixed by the Joint Committee on Judicial Administration, not to exceed the rate of \$35 per hour” in (a); substituted “\$1,300” for “\$900” in (b)(1) and (3); and substituted “\$2450” for “\$1700” in (b)(2) and (3).

Public Law 103-266 amended (f) to remove gender-specific references.

Temporary amendments of section. — Section 201 of D.C. Law 10-11 substituted “at a fixed rate of \$50 per hour” for “at a rate fixed by

the Joint Committee on Judicial Administration, not to exceed the rate of \$35 per hour” in (a); substituted “\$1,300” for “\$900” in (b)(1) and (3); and substituted “\$2450” for “\$1700” in (b)(2) and (3).

Section 601(b)(5) of D.C. Law 10-11 provided that for services rendered as a result of court appointments made on or after October 1, 1993, Section 201 shall apply as of October 1, 1993.

Section 701(b) of D.C. Law 10-11 provided that the act shall expire on the 225th day of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 201 of the Omnibus Budget Support Emergency Act of 1993 (D.C. Act 10-32, June 3, 1993, 40 DCR 3658).

Section 601 of D.C. Act 10-32 provides for application of the act.

Legislative history of Law 5-44. — Law 5-44, the “District of Columbia Criminal Justice Act Amendments Act of 1983,” was introduced in Council and assigned Bill No. 5-128, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on September 20, 1983 and October 4, 1983, respectively. Signed by the Mayor on October 11, 1983, it was assigned Act No. 5-69 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-11. — D.C. Law 10-11, the “Omnibus Budget Support Temporary Act of 1993,” was introduced in Council and assigned Bill No. 10-259. The Bill was adopted on first and second readings on May 4, 1993, and June 1, 1993, respectively. Signed by the Mayor on June 15, 1993, it was assigned Act No. 10-39 and transmitted to both Houses of Congress for its review. D.C. Law 10-11 became effective on August 6, 1993.

Legislative history of Law 10-25. — D.C. Law 10-25, the “Omnibus Budget Support Act of 1993,” was introduced in Council and assigned Bill No. 10-165, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-57 and transmitted to both Houses of Congress for its review. D.C. Law 10-25 became effective on September 30, 1993.

Application of Law 5-44. — Section 4(a) of D.C. Law 5-44 provided that the act shall apply to services rendered as a result of court appointments made after January 31, 1984.

Application of Law 10-25. — Section 601(b)(5) of D.C. Law 10-25 provided that for services rendered as a result of court appointments made on or after October 1, 1993, section 201 shall apply as of October 1, 1993.

Intent of this section is that attorneys appointed thereunder be reasonably and fairly compensated. *Thompson v. District of Columbia*, App. D.C., 407 A.2d 678 (1979).

Judicial discretion determines a claim under this section. *Thompson v. District of Columbia*, App. D.C., 407 A.2d 678 (1979).

Rate of compensation. — This section is written in terms of maximums and does not establish a specific rate of compensation. *Thompson v. District of Columbia*, App. D.C., 407 A.2d 678 (1979).

Entitlement to compensation. — Court appointed counsel who investigate possible ineffectiveness of trial counsel are entitled to compensation pursuant to this section. *Doe v. United States*, App. D.C., 583 A.2d 670 (1990).

Cited in *In re A.S.W.*, App. D.C., 391 A.2d 1385 (1978); *Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie*, 725 F.2d 695 (D.C. Cir. 1984); *In re Allen*, 120 WLR 2721 (Super. Ct. 1992); *In re Mitchell*, 121 WLR 541 (Super. Ct. 1993).

§ 11-2605. Services other than counsel.

(a) Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.

(b) Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services, excluding the preparation of reporter's transcript, without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed \$375 or the rate provided by section 3006A(e)(2) of title 18, United States Code, whichever is higher, and expenses reasonably incurred.

(c) Compensation to be paid to a person for services rendered by such person to a person under this subsection shall not exceed \$750, or the rate provided by section 3006A(e)(3) of title 18, United States Code, whichever is higher, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the presiding judge in the case. (1973 Ed.,

§ 11-2605; Sept. 3, 1974, 88 Stat. 1092, Pub. L. 93-412, § 2; Jan. 31, 1984, D.C. Law 5-44, § 3, 30 DCR 5411; June 13, 1994, Pub. L. 103-266, § 1(b)(122), 108 Stat. 713.)

Cross references. — As to compensation of attorneys in neglect and termination of parental rights proceedings, see § 16-2326.1.

Section references. — This section is referred to in §§ 6-2506, 11-2606, and 16-2326.1.

Effect of amendments. — Public Law 103-266 amended (c) to remove gender-specific references.

Legislative history of Law 5-44. — See note to § 11-2604.

Subsection (a) is identical to 18 U.S.C. § 3006A (e)(1) which provides for defense-related services in the federal district courts. *Gaither v. United States*, App. D.C., 391 A.2d 1364 (1978).

Reason for ex parte proceeding. — The requirement that eligibility and need for a defense service be determined in an ex parte proceeding affords the defendant an opportunity to present his request to the trial court without prematurely disclosing the merits of his defense to the prosecution. *Gaither v. United States*, App. D.C., 391 A.2d 1364 (1978).

Counsel should state facts giving rise to need for services. — Although subsection (a) does not require that an application be accompanied by a supporting memorandum, defense counsel should state in the application or a memorandum the facts giving rise to a defendant's need for a particular defense service, thereby affording the trial court an opportunity to weed out frivolous requests without the need for a hearing. *Gaither v. United States*, App. D.C., 391 A.2d 1364 (1978).

Psychiatric assistance in preparing insanity defense comes within subsection (a). *Gaither v. United States*, App. D.C., 391 A.2d 1364 (1978).

Purpose of psychiatric expert under subsection (a) is to assist defense counsel in determining whether there is a basis for a substantial defense of sanity and in preparing and presenting such a defense if after examination it appears justified. *Gaither v. United States*, App. D.C., 391 A.2d 1364 (1978).

Defendant does not always have the right to a psychiatrist under subsection (a). *Gaither v. United States*, App. D.C., 391 A.2d 1364 (1978).

A court need not appoint a psychiatrist if there is absolutely no reason to think that a plea of insanity would be successful or if a reasonable attorney would not pursue an insanity defense. *Gaither v. United States*, App. D.C., 391 A.2d 1364 (1978).

The court may deny a request for a psychiatrist under subsection (a) if the defendant has

received sufficient psychiatric assistance from other sources to develop an adequate defense. *Gaither v. United States*, App. D.C., 391 A.2d 1364 (1978).

A court may deny a request under this section on the basis that the defendant already had received sufficient psychiatric assistance to prepare his defense. *Dobson v. United States*, App. D.C., 426 A.2d 361 (1981); *In re Morrow*, App. D.C., 463 A.2d 689 (1983).

Concern of court in evaluating request for appointment of psychiatrist. — In evaluating the request for appointment of a psychiatrist under this section the court is not concerned with the ultimate question of whether or not the defendant was sane at the time of the offense, but rather whether the evidence of mental disorder is such that a reasonable attorney would pursue an insanity defense. *Dobson v. United States*, App. D.C., 426 A.2d 361 (1981).

Factors trial court should consider in evaluating request for psychiatrist. — In determining whether psychiatric assistance is necessary, the trial court should consider the defendant's prior psychological history, any reports concerning his mental state, the opinion of those who have had an opportunity to view him, the record and the judge's own evaluation of the defendant's demeanor. *Gaither v. United States*, App. D.C., 391 A.2d 1364 (1978); *Dobson v. United States*, App. D.C., 426 A.2d 361 (1981).

In making the determination of whether the services of a psychiatric expert are "necessary for an adequate defense," the trial court should tend to rely on the judgment of defense counsel who has the primary duty of providing an adequate defense. *Gaither v. United States*, App. D.C., 391 A.2d 1364 (1978); *Dobson v. United States*, App. D.C., 426 A.2d 361 (1981).

Character of expert psychiatric services provided under this section. — This section goes beyond provisions such as § 24-301(a), which provides for a mental examination pursuant to an order of the court, in that a psychiatric expert appointed under this section is not primarily an aide to the court but can be a partisan witness, and his conclusions and opinions need not be reported to either the court or the prosecution. *Gaither v. United States*, App. D.C., 391 A.2d 1364 (1978).

The task of a § 24-301(a) expert essentially is to provide the court, in a neutral and detached manner, with an evaluation of the accused's competency to stand trial or of defendant's sanity at the time of the commission of

the offense. In contrast, the expert under subsection (a) of this section acts as a consultant to the defendant, not to the court, and his main purpose is to help determine whether there is a reasonable basis for an insanity defense. *Dobson v. United States*, App. D.C., 426 A.2d 361 (1981).

\$300 limit absent showing by counsel. — Unless defense counsel can show in his application some justification for payments in excess of \$300, the trial court should limit compensation to that amount. *Gaither v. United States*, App. D.C., 391 A.2d 1364 (1978).

Deference must be given to judgment of counsel, but this does not prevent the trial court from exercising its discretion. In *re Morrow*, App. D.C., 463 A.2d 689 (1983).

Services of chemist. — Trial court did not abuse its discretion in refusing appellant's re-

quest for appointment of a chemist to assist the defense in a case where the defendant was convicted of possession of cocaine, possession with intent to distribute marijuana and two counts each of possession of heroin, unlawful ammunition and unregistered firearms. *Berry v. United States*, App. D.C., 528 A.2d 1209 (1987).

Cited in *In re A.S.W.*, App. D.C., 391 A.2d 1385 (1978); *Wilson v. United States*, App. D.C., 403 A.2d 333 (1979); *White v. United States*, App. D.C., 451 A.2d 848 (1982); *Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie*, 725 F.2d 695 (D.C. Cir. 1984); *Robinson v. United States*, App. D.C., 565 A.2d 964 (1989); *In re Allen*, 120 WLR 2721 (Super. Ct. 1992).

§ 11-2606. Receipt of other payments.

(a) Whenever the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, or to any person or organization authorized pursuant to section 2605 of this title to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

(b) Any person compensated, or entitled to be compensated, for any services rendered under this chapter who shall seek, ask, demand, receive, or offer to receive, any money, goods, or services in return therefor from or on behalf of a defendant or respondent shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (1973 Ed., § 11-2606; Sept. 3, 1974, 88 Stat. 1092, Pub. L. 93-412, § 2.)

Section references. — This section is referred to in § 11-2603.

Congressional intent. — Congress clearly sought to make illegal the request or acceptance of a fee by a court-appointed attorney from his client, except where the court has first found the defendant financially able to bear the cost or funds are found to be available for payment. *Willcher v. United States*, App. D.C., 408 A.2d 67 (1979).

Subsection (b) is not unconstitutionally vague. *Willcher v. United States*, App. D.C., 408 A.2d 67 (1979).

Terms of subsection (b) put a reasonable person on notice that certain conduct is deemed criminal. *Willcher v. United States*, App. D.C., 408 A.2d 67 (1979).

Subsection (b) must be read in conjunction with subsection (a) of this section. Sub-

section (b) is the penalty provision for conduct proscribed by subsection (a). *Willcher v. United States*, App. D.C., 408 A.2d 67 (1979).

Proof of scienter not necessary for disciplinary sanction. — In a matter of attorney discipline, not criminal conviction under subsection (b) of this section, with its requirement of proof of scienter, it is altogether reasonable to expect attorneys appointed under the Criminal Justice Act to reflect upon their duties, and seek informed advice, well before acting in this area latent with the potential of dishonesty for personal gain. In short, whether respondent's conduct was reckless or somewhat less blameworthy, it trenched upon the statutory ban in a manner that justifies the issuance of an informal admonition. In *re L.R.*, App. D.C., 640 A.2d 697 (1994).

Seeking dual compensation not re-

quired for violation. — Trial court properly refused to instruct the jury that a defendant-attorney must have sought dual compensation in order to be convicted of violating this section. *Gregory v. United States*, App. D.C., 393 A.2d 132 (1978).

Extent of payment ban an appellate services or ancillary trial motions. — It is a perfectly natural reading of this section to hold that it bars acceptance of payment from a defendant for services performed in the very same case in which the attorney has been appointed to represent the defendant free of charge — whether these services are appellate or include the filing of an ancillary motion in the trial court. In *re L.R.*, App. D.C., 640 A.2d 697 (1994).

Extent of payment ban on motion to reduce sentence. — This section prohibits conditioning the filing of a motion to reduce sentence in the same criminal case upon payment from the client attorney initially was appointed to represent. In *re L.R.*, App. D.C., 640 A.2d 697 (1994).

Entitlement to compensation commences when the lawyer undertakes representation of an eligible client, not after he discharges his legal duties. *Willcher v. United States*, App. D.C., 408 A.2d 67 (1979).

Violation of subsection (b) inherently involves moral turpitude. — Since the unlawful solicitation of money from an indigent client by an attorney appointed under the Criminal Justice Act, in violation of subsection (b) of this section, is always a fraud on the client who is entitled to legal services free of charge and on the judicial system, a violation of subsection (b) of this section falls squarely within the definition of an offense inherently involving moral turpitude, thus warranting

disbarment under § 11-2503(a). In *re Willcher*, App. D.C., 447 A.2d 1198 (1982).

Statutory violation presumptively prejudicial to administration of justice. — Conduct that violates subsection (a) of this section is presumptively prejudicial to the administration of the Criminal Justice Act system, if for no other reason than because of the belief it likely will instill in the defendant that the quality of his representation may yet depend upon gathering together funds to compensate the attorney whom he has not selected. Whether or not this leads to an actual falling out between attorney and client and the need for reappointment by the court is incidental. In *re L.R.*, App. D.C., 640 A.2d 697 (1994).

Instruction on entitlement to compensation proper. — Where attorney prosecuted for violating this section knew that the Criminal Justice Act office had found the defendant eligible for representation, that a document reflecting that determination was before the court and that he would be compensated for his services if he submitted a voucher when the case was completed, the jury could have found him “entitled” to receive compensation within the meaning of this section, and the court did not err in instructing to that effect. *Gregory v. United States*, App. D.C., 393 A.2d 132 (1978).

Instruction clarifying crime charged. — Where defendant was charged with a violation under subsection (b) of this section, a judge’s instruction including a quoting of subsection (a) of this section was not in error and was helpful in clarifying the crime charged. *Willcher v. United States*, App. D.C., 408 A.2d 67 (1979).

Cited in *In re A.S.W.*, App. D.C., 391 A.2d 1385 (1979); *In re Dwyer*, App. D.C., 399 A.2d 1 (1979); *In re McBride*, App. D.C., 602 A.2d 626 (1992).

§ 11-2607. Preparation of Budget.

The joint committee shall prepare and annually submit to the Mayor of the District of Columbia, in conformity with section 1743 of this title, or to the Mayor’s successor in accordance with section 445 of the District of Columbia Self-Government and Governmental Reorganization Act, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for furnishing representation by private attorneys to persons entitled to representation in accordance with section 2601 of this title. (1973 Ed., § 11-2607; Sept. 3, 1974, 88 Stat. 1093, Pub. L. 93-412, § 2; June 13, 1994, Pub. L. 103-266, § 1(b)(123), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 substituted “Mayor” for “Commissioner,” and substituted “the Mayor’s successor” for “his successor” to remove gender-specific references.

References in text. — Section 445 of the District of Columbia Self-Government and Gov-

ernmental Reorganization Act, referred to in this section, appears as § 445 of the Appendix to this title.

Cited in *In re A.S.W.*, App. D.C., 391 A.2d 1385 (1978).

§ 11-2608. Authorization of appropriations.

There are hereby authorized to be appropriated, out of any moneys in the Treasury credited to the District of Columbia, such funds as may be necessary for the administration of this chapter. When so specified in appropriation Acts, such appropriations shall remain available until expended. (1973 Ed., § 11-2608; Sept. 3, 1974, 88 Stat. 1093, Pub. L. 93-412, § 2; June 15, 1976, D.C. Law 1-69, § 2, 23 DCR 531.)

Legislative history of Law 1-69. — Law 1-69, the “Criminal Justice Supervisory Board Act of 1978,” was introduced in Council and assigned Bill No. 1-211 which was referred to the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on February 24,

1976 and March 9, 1976, respectively. Signed by the Mayor on March 29, 1976, it was assigned Act No. 1-102 and transmitted to both Houses of Congress for its review.

Cited in *In re A.S.W.*, App. D.C., 391 A.2d 1385 (1978).

§ 11-2609. Authority of Council.

Section 602(a)(4) of the District of Columbia Self-Government and Governmental Reorganization Act shall not apply to this chapter. (1973 Ed., § 11-2609; Sept. 3, 1974, 88 Stat. 1093, Pub. L. 93-412, § 2.)

References in text. — Section 602(a)(4) of the District of Columbia Self-Government and

Governmental Reorganization Act, referred to in this section, is codified in § 1-233(a)(4).

APPENDIX.

DISTRICT OF COLUMBIA SELF-GOVERNMENT AND
GOVERNMENTAL REORGANIZATION ACT.

TITLE IV. THE DISTRICT CHARTER.

PART C. THE JUDICIARY.

§ 431. Judicial powers.

(a) The judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. The Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District and of any criminal case under any law applicable exclusively to the District. The Superior Court has no jurisdiction over any civil or criminal matter over which a United States court has exclusive jurisdiction pursuant to an Act of Congress. The Court of Appeals has jurisdiction of appeals from the Superior Court and, to the extent provided by law, to review orders and decisions of the Mayor, the Council, or any agency of the District. The District of Columbia courts shall also have jurisdiction over any other matters granted to the District of Columbia courts by other provisions of law.

(b) The chief judge of a District of Columbia court shall be designated by the District of Columbia Judicial Nominating [Nomination] Commission established by section 434 from among the judges of the court in regular active service, and shall serve as chief judge for a term of four years or until a successor is designated, except that the term as chief judge shall not extend beyond the chief judge's term as a judge of a District of Columbia court. An individual shall be eligible for redesignation as chief judge.

(c) A judge of a District of Columbia court appointed on or after the date of enactment of the District of Columbia Court Reorganization Act of 1970 [July 29, 1970] shall be appointed for a term of fifteen years subject to mandatory retirement at age seventy-four or removal, suspension, or involuntary retirement pursuant to section 432 and upon completion of such term, such judge shall continue to serve until reappointed or a successor is appointed and qualifies. A judge may be reappointed as provided in subsection (c) of section 433.

(d)(1) There is established a District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter referred to as the "Tenure Commission"). The Tenure Commission shall consist of seven members selected in accordance with the provisions of subsection (e). Such members shall serve for terms of six years, except that the member selected in accordance with subsection (e)(3)(A) shall serve for five years; of the members first selected in accordance with subsection (e)(3)(B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (e)(3)(C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with

subsection (e)(3)(D) shall serve for six years; and the member first appointed in accordance with subsection (e)(3)(E) shall serve for six years. In making the respective first appointments according to subsections (e)(3)(B) and (e)(3)(C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(2) The Tenure Commission shall act only at meetings called by the Chairman or a majority of the Tenure Commission held after notice has been given of such meeting to all Tenure Commission members.

(3) The Tenure Commission shall choose annually, from among its members, a Chairman and such other officers as it may deem necessary. The Tenure Commission may adopt such rules of procedures not inconsistent with this Act as may be necessary to govern the business of the Tenure Commission.

(4) The District government shall furnish to the Tenure Commission, upon the request of the Tenure Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Tenure Commission properly to perform its functions. Information so furnished shall be treated by the Tenure Commission as privileged and confidential.

(e)(1) No person may be appointed to the Tenure Commission unless such person —

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least ninety days immediately prior to appointment; and

(C) is not an officer or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 102 of title 5 of the United States Code); and (except with respect to the person appointed or designated according to paragraph (3)(E)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Tenure Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of such person's predecessor.

(3) In addition to all other qualifications listed in this section, lawyer members of the Tenure Commission shall have the qualifications prescribed for persons appointed as judges of the District of Columbia courts. Members of the Tenure Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both of whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

No person may serve at the same time on both the District of Columbia Judicial Nomination Commission and on the District of Columbia Commission on Judicial Disabilities and Tenure.

(f) Any member of the Tenure Commission who is an active or retired Federal judge shall serve without additional compensation. Other members shall receive the daily equivalent at the rate provided by grade 18 of the General Schedule, established under section 5332 of title 5 of the United States Code, while actually engaged in service for the Commission.

(g) The Tenure Commission shall have the power to suspend, retire, or remove a judge of a District of Columbia court as provided in section 432 and to make recommendations regarding the appointment of senior judges of the District of Columbia courts as provided in section 11-1504 of the District of Columbia Code. (1973 Ed., Title 11, appx., § 431; Dec. 24, 1973, 87 Stat. 792, Pub. L. 93-198, title IV, § 431; Oct. 13, 1977, 91 Stat. 1155, Pub. L. 95-131, § 3(a); Oct. 30, 1984, 98 Stat. 3142, Pub. L. 98-598, § 2(b); Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 4; June 13, 1994, Pub. L. 103-266, §§ 2(b)(1), 2(b)(2), 2(b)(3), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (b), (c), and (e) to remove gender-specific references and amended (c) and (e) to correct typographical or grammatical errors.

Severability of Public Law 93-198. — As

to severability of Public Law 93-198, the District of Columbia Self-Government and Governmental Reorganization Act, see § 762 of the act, set forth in Volume 1.

§ 432. Removal, suspension, and involuntary retirement of Judges.

(a)(1) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Tenure Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction of a crime which is punishable as a felony under Federal law or which would be a felony in the District.

(2) A judge of a District of Columbia court shall also be removed from office upon affirmance of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Tenure Commission (or upon expiration of the time within which such an appeal may be taken) after a determination by the Tenure Commission of —

(A) willful misconduct in office,

(B) willful and persistent failure to perform judicial duties, or

(C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute.

(b) A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Tenure Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is

likely to become permanent and which prevents, or seriously interferes with, the proper performance of judicial duties, and (2) the Tenure Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

(c)(1) A judge of a District of Columbia court shall be suspended, without salary —

(A) upon —

(i) proof of conviction of a crime referred to in subsection (a)(1) which has not become final, or

(ii) the filing of an order of removal under subsection (a)(2) which has not become final; and

(B) upon the filing by the Tenure Commission of an order of suspension in the District of Columbia Court of Appeals.

Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed or the order of removal is set aside, the judge shall be reinstated and shall recover any salary and all other rights and privileges of office.

(2) A judge of a District of Columbia court shall be suspended from all judicial duties, with such retirement salary as the judge may be entitled, upon the filing by the Tenure Commission of an order of involuntary retirement under subsection (b) in the District of Columbia Court of Appeals. Suspension shall continue until termination of all appeals. If the order of involuntary retirement is set aside, the judge shall be reinstated and shall recover judicial salary less any retirement salary received and shall be entitled to all the rights and privileges of office.

(3) A judge of a District of Columbia court shall be suspended from all or part of the judge's judicial duties, with salary, if the Tenure Commission, upon concurrence of five members, (A) orders a hearing for the removal or retirement of the judge pursuant to this subchapter and determines that such suspension is in the interest of the administration of justice, and (B) files an order of suspension in the District of Columbia Court of Appeals. The suspension shall terminate as specified in the order (which may be modified, as appropriate, by the Tenure Commission) but in no event later than the termination of all appeals. (1973 Ed., Title 11, appx., § 432; Dec. 24, 1973, 87 Stat. 794, Pub. L. 93-198, title IV, § 432; June 13, 1994, Pub. L. 103-266, §§ 2(b)(4), (5), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (b) and (c) to remove gender-specific references.

Severability of Public Law 93-198. — As

to severability of Public Law 93-198, the District of Columbia Self-Government and Governmental Reorganization Act, see § 762 of the act, set forth in Volume 1.

§ 433. Nomination and appointment of judges.

(a) Except as provided in section 434(d)(1), the President shall nominate, from the list of persons recommended by the District of Columbia Judicial Nomination Commission established under section 434, and, by and with the

advice and consent of the Senate, appoint all judges of the District of Columbia courts.

(b) No person may be nominated or appointed a judge of a District of Columbia court unless the person —

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding the nomination or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or the District of Columbia government;

(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to the nomination, and shall retain such residency while serving as such judge, except judges appointed prior to the effective date of this part who retain residency as required by section 1501(a) of title 11 of the District of Columbia Code shall not be required to be residents of the District to be eligible for reappointment or to serve any term to which reappointed;

(4) is recommended to the President, for such nomination and appointment, by the District of Columbia Judicial Nomination Commission; and

(5) has not served, within a period of two years prior to the nomination, as a member of the Tenure Commission or of the District of Columbia Judicial Nomination Commission.

(c) Not less than six months prior to the expiration of the judge's term of office, any judge of the District of Columbia courts may file with the Tenure Commission a declaration of candidacy for reappointment. If a declaration is not so filed by any judge, a vacancy shall result from the expiration of the term of office and shall be filled by appointment as provided in subsections (a) and (b). If a declaration is so filed, the Tenure Commission shall, not less than sixty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written evaluation of the declaring candidate's performance during the present term of office and the candidate's fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, the President shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the renomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court. (1973 Ed., Title 11, appx., § 433; Dec. 24, 1973, 87 Stat. 795,

Pub. L. 93-198, title IV, § 433; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, §§ 12, 13; June 13, 1994, Pub. L. 103-266, §§ 2(b)(6), 2(b)(7), 2(b)(8), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended this section to remove gender-specific references.

to severability of Public Law 93-198, the District of Columbia Self-Government and Governmental Reorganization Act, see § 762 of the act, set forth in Volume 1.

Severability of Public Law 93-198. — As

§ 434. District of Columbia Judicial Nomination Commission.

(a) There is established for the District of Columbia the District of Columbia Judicial Nomination Commission (hereafter in this section referred to as the “Commission”). The Commission shall consist of seven members selected in accordance with the provisions of subsection (b). Such members shall serve for terms of six years, except that the member selected in accordance with subsection (b)(4)(A) shall serve for five years; of the members first selected in accordance with subsection (b)(4)(B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (b)(4)(C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (b)(4)(D) shall serve for six years; and the member first appointed in accordance with subsection (b)(4)(E) shall serve for six years. In making the respective first appointments according to subsections (b)(4)(B) and (b)(4)(C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(b)(1) No person may be appointed to the Commission unless the person —

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least 90 days immediately prior to appointment; and

(C) is not a member, officer, or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 102 of title 5 of the United States Code); and (except with respect to the person appointed or designated according to paragraph (4)(E)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of such person’s predecessor.

(3) It shall be the function of the Commission to submit nominees for appointment to positions as judges of the District of Columbia courts in accordance with section 433 of this Act.

(4) In addition to all other qualifications listed in this section, lawyer members of the Commission shall have the qualifications prescribed for

persons appointed as judges for the District of Columbia courts. Members of the Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both of whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

(5) Any member of the Commission who is an active or retired Federal judge shall serve without additional compensation. Other members shall receive the daily equivalent at the rate provided by grade 18 of the General Schedule, established under section 5332 of title 5 of the United States Code, while actually engaged in service for the Commission.

(c)(1) The Commission shall act only at meetings called by the Chairman or a majority of the Commission held after notice has been given of such meeting to all Commission members. Meetings of the Commission may be closed to the public. Section 742 of this Act shall not apply to meetings of the Commission.

(2) The Commission shall choose annually, from among its members, a Chairman, and such other officers as it may deem necessary. The Commission may adopt such rules of procedures not inconsistent with this Act as may be necessary to govern the business of the Commission.

(3) The District government shall furnish to the Commission, upon the request of the Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Commission properly to perform its function. Information, records, and other materials furnished to or developed by the Commission in the performance of its duties under this section shall be privileged and confidential. Section 552 of title 5, United States Code (known as the Freedom of Information Act), shall not apply to any such materials.

(d)(1) In the event of a vacancy in any position of the judge of a District of Columbia court, the Commission shall, within sixty days following the occurrence of such vacancy, submit to the President, for possible nomination and appointment, a list of three persons for each vacancy. If more than one vacancy exists at one given time, the Commission must submit lists in which no person is named more than once and the President may select more than one nominee from one list. Whenever a vacancy will occur by reason of the expiration of such judge's term of office, the Commission's list of nominees shall be submitted to the President not less than sixty days prior to the occurrence of such vacancy. In the event the President fails to nominate, for Senate confirmation, one of the persons on the list submitted to the President under this section within sixty

days after receiving such list, the Commission shall nominate, and with the advice and consent of the Senate, appoint one of those persons to fill the vacancy for which such list was originally submitted to the President.

(2) In the event any person recommended by the Commission to the President requests that the recommendation be withdrawn, dies, or in any other way becomes disqualified to serve as a judge of the District of Columbia courts, the Commission shall promptly recommend to the President one person to replace the person originally recommended.

(3) In no instance shall the Commission recommend any person, who in the event of timely nomination following a recommendation by the Commission, does not meet, upon such nomination, the qualifications specified in section 433.

(4) Upon submission to the President, the name of any individual recommended under this subsection shall be made public by the Judicial Nomination Commission. (1973 Ed., Title 11, appx., § 434; Dec. 24, 1973, 87 Stat. 796, Pub. L. 93-198, title IV, § 434; Oct. 13, 1977, 91 Stat. 1155, Pub. L. 95-131, § 3(b); Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, §§ 8-10, 15; June 13, 1994, Pub. L. 103-266, §§ 2(b)(9), 2(b)(10), 108 Stat. 713.)

Effect of amendments. — Public Law 103-266 amended (b) and (d) to remove gender-specific references.

References in text. — “Section 742 of this Act” referred to is subsection (c)(1), is § 742 of Title VII of the District of Columbia Self-Government and Governmental Reorganization Act, found in Volume 1.

Severability of Public Law 93-198. — As to severability of Public Law 93-198, the District of Columbia Self-Government and Govern-

mental Reorganization Act, see § 762 of the act, set forth in Volume 1.

Time limit for submission of lists. — Section 3 of Public Law 98-235 provided that notwithstanding the time limitations of subsection (d)(1) of this section, the District of Columbia Judicial Nomination Commission shall submit lists for initial nominations and appointments to judicial positions created under the act within 90 days after the date of enactment of the act. Approved March 19, 1984.

PART D. DISTRICT BUDGET AND FINANCIAL MANAGEMENT.

§ 445. District of Columbia courts' budget.

The District of Columbia courts shall prepare and annually submit to the Mayor, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system. All such estimates shall be forwarded by the Mayor to the Council, for its action pursuant to sections 47-304 and 47-313(c), without revision but subject to his recommendations. Notwithstanding any other provision of this Act, the Council may comment or make recommendations concerning such annual estimates involving the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system submitted by such courts but shall have no authority under this Act to revise such estimates. The courts shall submit as part of their budgets both a multiyear plan and a multiyear capital improvements plan and shall submit a statement presenting qualitative and quantitative descriptions of court activities and the status of efforts to comply with reports of the District of Columbia Auditor and the Comptroller General of the United States. (1973

Ed., Title 11, appx., § 445, Dec. 24, 1973, 87 Stat. 800, Pub. L. 93-198, title IV, § 445.)

Severability of Public Law 93-198. — As to severability of Public Law 93-198, the District of Columbia Self-Government and Govern- mental Reorganization Act, see § 762 of the act, set forth in Volume 1.

TITLE VII REFERENDUM; SUCCESSION IN GOVERNMENT; TEMPORARY PROVISIONS; MISCELLANEOUS; AMENDMENTS TO DISTRICT OF COLUMBIA ELECTION ACT; RULES OF CONSTRUCTION; AND EFFECTIVE DATES

PART B. SUCCESSION IN GOVERNMENT.

§ 718. Continuation of District of Columbia court system.

(a) The District of Columbia Court of Appeals, the Superior Court of the District of Columbia, and the District of Columbia Commission on Judicial Disabilities and Tenure shall continue as provided under the District of Columbia Court Reorganization Act of 1970 subject to the provisions of part C of title IV of this Act and section 1-233(a)(4).

(b) The term and qualifications of any judge of any District of Columbia court, and the term and qualifications of any member of the District of Columbia Commission on Judicial Disabilities and Tenure appointed prior to the effective date of title IV of this Act shall not be affected by the provisions of part C of title IV of this Act. No provision of this Act shall be construed to extend the term of any such judge or member of such Commission. Judges of the District of Columbia courts and members of the District of Columbia Commission on Judicial Disabilities and Tenure appointed after the effective date of title IV of this Act shall be appointed according to part C of such title IV.

(c) Nothing in this Act shall be construed to amend, repeal, or diminish the duties, rights, privileges, or benefits accruing under sections 1561 through 1571 of title 11 of the District of Columbia Code, and sections 703 and 904 of such title, dealing with the retirement and compensation of the judges of the District of Columbia courts. (1973 Ed., Title 11, appx., § 718; Dec. 24, 1973, 87 Stat. 820, Pub. L. 93-198, title VII, § 718.)

Severability of Public Law 93-198. — As to severability of Public Law 93-198, the District of Columbia Self-Government and Govern- mental Reorganization Act, see § 762 of the act, set forth in Volume 1.

TITLE 12. RIGHT TO REMEDY.

Chapter

1. Abatement and Revivor..... §§ 12-101 to 12-104.
3. Limitation of Actions..... §§ 12-301 to 12-311.

Cross references. — As to recovery of medical care expenses for police and firemen, see Chapter 5 of Title 4.

As to reciprocal recovery of taxes, see § 47-431 et seq.

CHAPTER 1. ABATEMENT AND REVIVOR.

Sec.

12-101. Survival of rights of action.

12-102. Substitution of parties.

12-103. Judgment and costs in case of new party.

Sec.

12-104. Marriage of party.

§ 12-101. Survival of rights of action.

On the death of a person in whose favor or against whom a right of action has accrued for any cause prior to his death, the right of action, for all such cases, survives in favor of or against the legal representative of the deceased. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88-241, § 1; 1973 Ed., § 12-101; Aug. 2, 1978, D.C. Law 2-95, § 2, 25 DCR 1270.)

Cross references. — As to actions for wrongful death, see §§ 16-2701 to 16-2703.

As to effect of dissolution of corporations, see §§ 29-388 and 29-416 to 29-418.

Legislative history of Law 2-95. — Law 2-95, the "District of Columbia General Survival of Tort Act," was introduced in Council and assigned Bill No. 2-52, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 18, 1978 and May 2, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-199 and transmitted to both Houses of Congress for its review.

Basis for section's enactment. — This section was enacted by Congress pursuant to its constitutional power and responsibility. In re Air Crash Disaster, 476 F. Supp. 521 (D.D.C. 1979).

Intent of act. — The intention of this act is to place the decedent's estate in the same position it would have enjoyed had the decedent's life not been prematurely terminated, and proper recovery under this act is based on probable net future earnings reduced by the amount the deceased would have used to maintain himself and those entitled to recover under the Wrongful Death Act. *Bonan v. Washington Hosp. Ctr.*, 119 WLR 1685 (Super. Ct. 1991).

Congressional policy. — This section represents a congressionally determined policy

governing survival of actions. In re Air Crash Disaster, 476 F. Supp. 521 (D.D.C. 1979).

Design of section. — This section is designed to place the deceased's estate in the position it would have been in had the deceased's life not been cut short. *Semler v. Psychiatric Inst. of Washington, D.C., Inc.*, 575 F.2d 922 (D.C. Cir. 1978); *Richardson v. District of Columbia*, 116 WLR 2609 (Super. Ct. 1988).

Section creates no new right of action. *Jones v. Rogers Mem. Hosp.*, 442 F.2d 773 (D.C. Cir. 1971).

Survival Act creates entirely separate and distinct basis for relief from Wrongful Death Act. *Hoston v. United States*, 566 F. Supp. 1125 (D.D.C. 1983).

Section is inapplicable to a suit for partition of joint tenancy because such a suit is not a "right of action" of the type contemplated by this section. *Cobb v. Gilmer*, 365 F.2d 931 (D.C. Cir. 1966).

Heirs or next of kin are entitled to recognition as legal representatives in a survival action on behalf of a decedent's estate. In re Air Crash Disaster, 476 F. Supp. 521 (D.D.C. 1979).

As heir-at-law, deceased's son was a proper party to sue on a claim under this section, although he had not yet been qualified as administrator of the estate. *Strother v. District of Columbia, App. D.C.*, 372 A.2d 1291 (1977).

Situs of injury. — This section is not, by its terms, limited to injuries incurred in the District of Columbia. In re Air Crash Disaster, 476 F. Supp. 521 (D.D.C. 1979).

Limitations of actions. — The District's Survival Act is subject to a three-year statute of limitations. Jing W. Huang v. D'Albora, App. D.C., 644 A.2d 1 (1994).

Negligent conduct resulting in death may generate simultaneously 2 independent bases for action, one under this section and the other under the Wrongful Death Act. Emmett v. Eastern Dispensary & Cas. Hosp., 396 F.2d 931 (D.C. Cir. 1967); Wharton v. Jones, 285 F. Supp. 634 (D.D.C. 1968); Semler v. Psychiatric Inst. of Washington, D.C., Inc., 575 F.2d 922 (D.C. Cir. 1978); Waldon v. Covington, App. D.C., 415 A.2d 1070 (1980).

If tort results in death, 2 causes of action arise, 1 under this section, and the other under § 16-2701. Graves v. United States, 517 F. Supp. 95 (D.D.C. 1981); Richardson v. District of Columbia, 116 WLR 2609 (Super. Ct. 1988).

Recovery under this section is comprised of that which the deceased would have been able to recover had he lived. Graves v. United States, 517 F. Supp. 95 (D.D.C. 1981).

But double recovery to be avoided. — A recovery may be awarded under both this section and the Wrongful Death Act, but double recovery for the same elements of damage is to be voided. Runyon v. District of Columbia, 463 F.2d 1319 (D.C. Cir. 1972).

Limits of recovery. — Plaintiff cannot recover damages under the Survival Act representing amounts that decedent would have contributed, had he survived the defendants' alleged negligence, to the support of his spouse and next-of-kin during the remaining years of his normal life expectancy, and which would not have been accumulated in his eventual estate for the benefit of his heirs. Bonan v. Washington Hosp. Ctr., 119 WLR 1685 (Super. Ct. 1991).

Damages awarded prior to 1978 amendment. — Before the enactment of the 1978 amendment to this section, it was proper for the estate of the deceased to recover an amount based on probable net future earnings, discounted to present worth. Hughes v. Pender, App. D.C., 391 A.2d 259 (1978).

Before the 1978 amendment to this section, the proper recovery under this section was based on the decedent's probable net future earnings reduced by the amount he would have used to maintain himself and those entitled to recover under the Wrongful Death Act. Semler v. Psychiatric Inst. of Washington, D.C., Inc., 575 F.2d 922 (D.C. Cir. 1978).

Task of projecting lost earnings lends itself to clarification by expert testimony because it involves the use of statistical techniques and requires a broad knowledge of eco-

nomics. Hughes v. Pender, App. D.C., 391 A.2d 259 (1978).

Claim for loss of consortium. — A claim for loss of consortium is not encompassed by the Survival Act, which authorizes only a right of action accrued by or against the decedent himself. Bonan v. Washington Hosp. Ctr., 119 WLR 1685 (Super. Ct. 1991).

Damages for decedent's pain and suffering. — The 1978 amendment to this section which eliminated a previously-existing prohibition on damages for the decedent's pain and suffering reflects a legislative intent to allow such recovery. Graves v. United States, 517 F. Supp. 95 (D.D.C. 1981).

Damages for pain and suffering question for jury. — Where there is conflicting evidence on the issue of pain and suffering as an element of damages under the survival statute, that conflict must be resolved by the jury; however, the jury may not be left to merely speculate about the evidence. Doe v. Binker, App. D.C., 492 A.2d 857 (1985).

Whether a jury question exists with regard to a conscious pain and suffering issue must be determined only after a careful examination of the facts of each case. Doe v. Binker, App. D.C., 492 A.2d 857 (1985).

Hedonic damages. — Hedonic damages, damages for the loss of life's pleasures, are not recoverable under District of Columbia tort law. Richardson v. District of Columbia, 116 WLR 2609 (Super. Ct. 1988).

Death of viable fetus. — A cause of action exists under both the survival and wrongful death statutes for the death of a viable fetus and under the survival statute, recovery may include lost future earnings. Williams v. Crooks, 111 WLR 773 (Super. Ct. 1983).

A viable fetus has a right to be free of tortious injury; a child born alive has a cause of action for such an injury; a viable fetus negligently injured en ventre sa mere is a "person" within the meaning of the District wrongful death and survival statutes. Greater S.E. Community Hosp. v. Williams, App. D.C., 482 A.2d 394 (1984).

Death of nonviable fetus. — The District of Columbia survival statute does not grant to the legal representative of a nonviable fetus any cause of action brought in the name of the fetus. Ferguson v. District of Columbia, App. D.C., 629 A.2d 15 (1993).

Evidence of obstetrician's negligence resulting in stillbirth sufficient for recovery under section. — See Crooks v. Williams, App. D.C., 508 A.2d 912 (1986).

Punitive damages. — This section allows for the recovery of punitive damages under appropriate circumstances. In re Air Crash Disaster, 476 F. Supp. 521 (D.D.C. 1979).

Plaintiff is not entitled to ask punitive damages where there is no showing that the actions

of defendant were willful, wanton or malicious. *Sullivan v. Yellow Cab Co.*, App. D.C., 212 A.2d 616 (1965).

When appellate court will order new trial on damages. — When a jury finds a particular quantum of damages and the trial court refuses to disturb the jury's findings on a motion for a new trial, an appellate court will order a new trial only when the award is so inadequate as to indicate prejudice, passion or partiality on the part of the jury, or where it must have been based on oversight, mistake or consideration of an improper element. *Hughes v. Pender*, App. D.C., 391 A.2d 259 (1978).

No right of action created for beneficiaries. — The Survival Act does not create a new right of action for designated beneficiaries, rather, it preserves and carries forward for the benefit of the decedent's estate the right of action that the decedent would have had, had he not died. *Bonan v. Washington Hosp. Ctr.*, 119 WLR 1685 (Super. Ct. 1991).

Decedent's contributory negligence. — Decedent's contributory negligence in an elevator accident precluded recovery by his mother under this statute. *District of Columbia v. Brown*, App. D.C., 589 A.2d 384 (1991).

Action for pain and suffering of detainee in D.C. Jail. — Whatever caused decedent's asthma attack, the jury could have properly found from the evidence that the District committed distinct acts of negligence in allowing decedent to be out of his cell and to engage in group sexual activity, possibly against his will, to be chemically sprayed, and allowing him to die from an asthma attack without intervention, and that each resulted in compensable injuries. *Finkelstein v. District of Columbia*, App. D.C., 593 A.2d 591 (1991).

The trial judge did not abuse her discretion in setting aside the verdict where she was convinced that the gross disproportion between decedent/detainee's proven pain and suffering and the size of the damage award reflected the jury's determination to punish the District for tolerating the squalid conditions at D.C. Jail, of which it had heard so much evidence. *Finkelstein v. District of Columbia*, App. D.C., 593 A.2d 591 (1991).

Statute of limitations not tolled. — A pending wrongful death action does not toll the statute of limitations on a claim under this section. *Wharton v. Jones*, 285 F. Supp. 634 (D.D.C. 1968).

A pending personal injury action under this section does not toll the statute of limitations on a wrongful death claim. *Wharton v. Jones*, 285 F. Supp. 634 (D.D.C. 1968).

Choice of law. — The District of Columbia has increasingly applied an "interest analysis" approach to choice of law questions in tort cases in general and wrongful death cases in partic-

ular. *Semler v. Psychiatric Inst. of Washington, D.C., Inc.*, 575 F.2d 922 (D.C. Cir. 1978).

Action precluded by res judicata. — A Virginia judgment under the Virginia wrongful death statute was res judicata and precluded further recovery under this section because both suits were based on the same grouping of operative facts, the Virginia wrongful death action provided a single and exclusive remedy and the plaintiff had had a full opportunity to litigate the choice of law issue in the Virginia federal court. *Semler v. Psychiatric Inst. of Washington, D.C., Inc.*, 575 F.2d 922 (D.C. Cir. 1978).

And by estoppel. — Having obtained a favorable Virginia judgment premised on the applicability of the Virginia wrongful death law, a plaintiff was estopped from subsequently claiming that District law rather than Virginia law governed the rights and liabilities of the parties. *Semler v. Psychiatric Inst. of Washington, D.C., Inc.*, 575 F.2d 922 (D.C. Cir. 1978).

Cited in *Roscoe v. Roscoe*, 379 F.2d 94 (D.C. Cir. 1967); *Wender v. Hamburger*, 393 F.2d 365 (D.C. Cir. 1968); *Stone v. Brewster*, 399 F.2d 554 (D.C. Cir. 1968); *Bogan v. Green*, App. D.C., 239 A.2d 154 (1968); *Rieser v. District of Columbia*, 580 F.2d 647 (D.C. Cir. 1978); *Chandler v. District of Columbia*, App. D.C., 404 A.2d 964 (1979); *Quin v. George Washington Univ.*, App. D.C., 407 A.2d 580 (1979); *Letelier v. Republic of Chile*, 488 F. Supp. 665 (D.D.C. 1980); *de Letelier v. Republic of Chile*, 502 F. Supp. 259 (D.D.C. 1980); *Wilson v. Thornton*, App. D.C., 416 A.2d 228 (1980); *Wilson v. Johns-Manville Sales Corp.*, 684 F.2d 111 (D.C. Cir. 1982); *Estate of Chappelle v. Sanders*, App. D.C., 442 A.2d 157 (1982); *District of Columbia v. White*, App. D.C., 442 A.2d 159 (1982); *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983); *Peek v. District of Columbia*, App. D.C., 567 A.2d 50 (1989); *Saunders v. Air Fla., Inc.*, 558 F. Supp. 1233 (D.D.C. 1983); *In re Air Crash Disaster at Wash.*, 559 F. Supp. 333 (D.D.C. 1983); *Young v. Firemen's Ins. Co.*, App. D.C., 463 A.2d 675 (1983); *McCoy v. Quadrangle Dev. Corp.*, App. D.C., 470 A.2d 1256 (1983); *Romero v. National Rifle Ass'n of Am.*, 749 F.2d 77 (D.C. Cir. 1984); *Rustin v. District of Columbia*, App. D.C., 491 A.2d 496, cert. denied, 474 U.S. 946, 106 S. Ct. 343, 88 L. Ed. 2d 290 (1985); *District of Columbia v. Peters*, App. D.C., 527 A.2d 1269 (1987); *Capitol Hill Hosp. v. Jones*, App. D.C., 532 A.2d 89 (1987); *Waldman v. Levine*, App. D.C., 544 A.2d 683 (1988); *Stutsman v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, App. D.C., 546 A.2d 367 (1988); *Peek v. District of Columbia*, App. D.C., 567 A.2d 50 (1989); *Rose v. Kaiser Found.*, 117 WLR 2101 (Super. Ct. 1989); *Miles v. Chumpitazi*, 117 WLR 2141 (Super. Ct. 1989); *Perry v. Criss Bros. Iron Works*, 741 F. Supp. 985 (D.D.C. 1990); *In re A.C.*, App. D.C., 573 A.2d 1235 (1990); *Klahr v.*

District of Columbia, App. D.C., 576 A.2d 718 (1990); Wanzer v. District of Columbia, App. D.C., 580 A.2d 127 (1990); Kaiser Found. Health Plan of Mid-Atlantic States, Inc. v. Rose, App. D.C., 583 A.2d 156 (1990); Jackson v. Scott, 118 WLR 1293 (Super. Ct. 1990); Washington Metro. Area Transit Auth. v. Davis, App.

D.C., 606 A.2d 165 (1992); Lancaster v. District of Columbia, 120 WLR 1593 (Super. Ct. 1992); State Farm Mut. Auto. Ins. Co. v. Smalls, 121 WLR 117 (Super. Ct. 1992); Joy v. Bell Helicopter Textron, Inc., 999 F.2d 549 (D.C. Cir. 1993); District of Columbia v. Evans, App. D.C., 644 A.2d 1008 (1994).

§ 12-102. Substitution of parties.

The substitution of parties in civil actions in the United States District Court for the District of Columbia and the Superior Court of the District of Columbia is governed by the Federal Rules of Civil Procedure. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 551, Pub. L. 91-358, title I, § 141(1); 1973 Ed., § 12-102.)

Cited in Epps v. Vogel, App. D.C., 454 A.2d 320 (1982).

§ 12-103. Judgment and costs in case of new party.

In all cases where a new party is made to an action, the costs which accrued before the new party was made to the action shall be taxed as part of the costs in the action, and the judgment rendered shall be the same as if the action had been originally commenced between persons who are parties to the action. A defendant who is made a new party to the action may not be burdened with debts, damages, or costs beyond the amount of property or assets that have descended or come to his hands from the deceased. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88-241, § 1; 1973 Ed., § 12-103.)

§ 12-104. Marriage of party.

An action does not abate by the marriage of a party. On application of a party the court may, on such terms and notice as it deems proper, allow and order any amendment in the pleadings and the making of any new or additional parties that the marriage may render necessary or proper. (Dec. 23, 1963, 77 Stat. 510, Pub. L. 88-241, § 1; 1973 Ed., § 12-104.)

CHAPTER 3. LIMITATION OF ACTIONS.

Sec.	Sec.
12-301. Limitation of time for bringing actions.	12-309. Actions against District of Columbia for unliquidated damages; time for notice.
12-302. Disability of plaintiff.	12-310. Actions arising out of death or injury caused by defective or unsafe improvements to real property.
12-303. Absence or concealment of defendant.	12-311. Actions arising out of death or injury caused by exposure to asbestos.
12-304. Actions stayed by court or statute.	
12-305. Actions against decedents' estates.	
12-306. [Repealed].	
12-307. Foreign judgments.	
12-308. Actions by the United States.	

§ 12-301. Limitation of time for bringing actions.

Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

- (1) for the recovery of lands, tenements, or hereditaments — 15 years;
- (2) for the recovery of personal property or damages for its unlawful detention — 3 years;
- (3) for the recovery of damages for an injury to real or personal property — 3 years;
- (4) for libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest or false imprisonment — 1 year;
- (5) for a statutory penalty or forfeiture — 1 year;
- (6) on an executor's or administrator's bond — 5 years; on any other bond or single bill, covenant, or other instrument under seal — 12 years;
- (7) on a simple contract, express or implied — 3 years;
- (8) for which a limitation is not otherwise specially prescribed — 3 years;
- (9) for a violation of the District of Columbia Mental Health Information Act of 1978 (D.C. Code, sec. 6-2001 et seq.) — 1 year.
- (10) for the recovery of damages for an injury to real property from toxic substances including products containing asbestos — 5 years from the date the injury is discovered or with reasonable diligence should have been discovered.

This section does not apply to actions for breach or contracts for sale governed by § 28:2-725, nor to actions brought by the District of Columbia government. (Dec. 23, 1963, 77 Stat. 510, Pub. L. 88-241, § 1; Aug. 30, 1964, 78 Stat. 677, Pub. L. 88-509, § 2; 1973 Ed., § 12-301; Mar. 3, 1979, D.C. Law 2-136, § 805(c), 25 DCR 5055; Feb. 28, 1987, D.C. Law 6-202, § 3, 34 DCR 527; Apr. 30, 1988, D.C. Law 7-104, § 2(a), 35 DCR 147.)

Cross references. — As to return of property by Property Clerk, see § 4-157.

As to absence of limitation on action to recover part of cost of viaduct, see § 7-515.

As to absence of limitation on action to recover part of costs of subways and viaducts, see § 7-1415.

As to wrongful death actions, see § 16-2702.

As to limitation for adverse possession, see § 16-3301.

As to commencement of action in quo warranto for usurpation of office, see § 16-3548.

As to commencement of action after breach of contract for sale, see § 28:2-725.

As to commencement of action for usury, see § 28-3304.

As to limitation of action for unpaid wages or liquidated damages, see § 36-220.12.

As to limitation of enforcement action on mechanic's liens, see § 38-115.

As to limitation of enforcement action of hospital lien, see § 38-303.

As to commencement of action against com-

mon carrier for injury or death of employee, see § 44-404.

As to limitation upon assessment and collection of income tax, see § 47-1812.10.

Section references. — This section is referred to in § 12-308.

Legislative history of Law 2-136. — Law 2-136, the "District of Columbia Mental Health Information Act of 1978," was introduced in Council and assigned Bill No. 2-144, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first, second amended first, and second readings on July 11, 1978, July 25, 1978, September 19, 1978, July 25, 1978, September 19, 1978 and October 3, 1978, respectively. Signed by the Mayor on November 1, 1978, it was assigned Act No. 2-292 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-202. — See note to § 12-311.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was Adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

References in text. — The District of Columbia Mental Health Information Act of 1978, referred to in paragraph (9) of this section, is now codified in section 6-2001 et seq.

Scope of section. — Although this section provides limitations on a variety of actions, it is not the exclusive statute governing the statute of limitations field. *Mayo v. Mayo*, App. D.C., 508 A.2d 114 (1986).

Purposes of statutes of limitation are the prevention of state claims and unfair surprise. *Macklin v. Spector Freight Sys.*, 478 F.2d 979 (D.C. Cir. 1973).

The statute of limitations is in essence as much a prophylactic measure intended to protect the integrity of the administration of justice as it is an absolution of wrongdoers not called to account quickly enough by their victims. *Farris v. Compton*, 802 F. Supp. 487 (D.D.C. 1992).

The statute of limitations is primarily designed to insure that the evidence needed to adjudicate a claim will be available and that parties will not be unfairly confronted with stale claims. *Construction Interior Sys. v. Donohoe Cos.*, 813 F. Supp. 29 (D.D.C. 1992).

"Statutes of creation" not distinguished. — Appellees' attempt to distinguish between "statutes of creation," i.e., those laws creating a cause of action which include a time limitation in which to initiate the action, and statutes which permit an action to be initiated pursuant

to a general statute of limitation was without significance. *Easter Seal Soc'y for Disabled Children v. Berry*, App. D.C., 627 A.2d 482 (1993).

Retroactivity of statutes of limitation or repose. — The District of Columbia government may not change or apply statutes of limitation or repose (D.C. Law 6-202) retroactively in order to extricate itself from litigation already pending on the effective date of the change. *District of Columbia v. Owens-Corning Fiberglass Corp.*, 115 WLR 1905 (Super. Ct. 1987).

Policy basis for section. — The policies of protecting notice and securing ultimate peace between adversaries without unjustly barring claims form the basis for the general rule that this section begins to run only "from the time the right to maintain the action accrues," i.e., from the time that all the elements of a cause of action exist. *S. Freedman & Sons v. Hartford Fire Ins. Co.*, App. D.C., 396 A.2d 195 (1978).

Two policy considerations underlying statutes of limitations are: First, evidentiary, which relates to the search for truth which may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents or otherwise; and second, repose, which concerns the potential defendant's interests in security against stale claims and in planning for the future without the uncertainty inherent in potential liability. *Wilson v. Johns-Manville Sales Corp.*, 684 F.2d 111 (D.C. Cir. 1982).

Legislative intent. — The history and purposes of the District of Columbia Statute of Limitations Amendment Act of 1986 indicate that the council intended to preclude a statute of limitations defense in cases where the District of Columbia has a pecuniary interest in the litigation and is asserting a public interest, and it appears that the council did not intend to prohibit a statute of limitations defense where the District of Columbia has only a nominal or technical interest in the litigation. *D.C. v. P.L.*, 118 WLR 1729 (Super. Ct. 1990).

Law of forum governs. — Where the District of Columbia was the forum where the suit was brought, the law of the District governs the determination as to whether an action is barred under this section. *Nyhus v. Travel Mgt. Corp.*, 466 F.2d 440 (D.C. Cir. 1972); *Cornwell v. C.I.T. Corp.*, 373 F. Supp. 661 (D.D.C. 1974); *Hodge v. Southern Ry.*, App. D.C., 415 A.2d 543 (1980).

In diversity cases, the substantive law of the forum controls with respect to those issues which are outcome-determinative, and statutes of limitations are of that character. *Steorts v. American Airlines*, 647 F.2d 194 (D.C. Cir. 1981).

The question of whether an action is barred by a statute of limitations, being procedural, is governed by the statute of limitations of the

forum. *Steorts v. American Airlines*, 647 F.2d 194 (D.C. Cir. 1981).

Local statute of limitations borrowed in absence of specific federal statute. — Where no specific statute of limitations has ever been enacted by Congress for a claim arising under federal law, the appropriate local statute of limitations is borrowed. *Richards v. Mileski*, 662 F.2d 65 (D.C. Cir. 1981); *Doe v. United States Dep't of Justice*, 753 F.2d 1092 (D.C. Cir. 1985).

Unless a limitation is specifically provided by federal statute or treaty, a federal court must look to the limitations period of the district in which it sits and apply the most analogous statute. *Hanoch Tel-Oren v. Libyan Arab Republic*, 517 F. Supp. 542 (D.D.C. 1981), *aff'd*, 726 F.2d 774 (1984), *cert. denied*, 470 U.S. 1003, 105 S. Ct. 1354, 84 L. Ed. 2d 377 (1985).

The 3-year limitation for actions for which a limitation is not otherwise specially prescribed was applicable where federal action contained no statute of limitations. *Hagmeyer v. United States Dep't of Treas.*, 647 F. Supp. 1300 (D.D.C. 1986).

Action brought by American citizen against foreign government and its agents. — In an action brought in federal district court by an American citizen against a foreign government and its agents, the applicable statute of limitations is determined by the local law of the forum. *Gilson v. Republic of Ireland*, 682 F.2d 1022 (D.C. Cir. 1982).

Tolling policy for federal case adopting local statute remains federal question. — Although local statutes of limitation are used for federal causes of action for which Congress has not provided an express limitation period, the tolling policy for such a case remains a federal question. *Richards v. Mileski*, 662 F.2d 65 (D.C. Cir. 1981).

Running of statute of limitations against foreign governments was not tolled until the passage of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1330. *Gilson v. Republic of Ireland*, 682 F.2d 1022 (D.C. Cir. 1982).

"Discovery rules" are adopted to avoid unfairness of interpreting statute of limitations to accrue when the injury first occurs, if at that time plaintiff does not have enough information to bring suit. *Dawson v. Eli Lilly & Co.*, 543 F. Supp. 1330 (D.D.C. 1982).

Policy basis for prompt litigation of property injury claims. — The preoccupation pertaining to the limitation of time for bringing actions with property injury claims as a distinct class indicates a policy that such lawsuits should be heard and disposed of with reasonable promptitude. *District of Columbia Armory Bd. v. Volkert*, 402 F.2d 215 (D.C. Cir. 1968).

Trial court is not bound by plaintiff's characterization of action where the complaint pleads in substance a different cause of action. *Maddox v. Bano*, App. D.C., 422 A.2d 763 (1980).

In a determination of the applicable statute of limitations, the plaintiff's characterization of the claim is not controlling. *Saunders v. Nemati*, App. D.C., 580 A.2d 660 (1990).

Filing of complaint tolls statute of limitations. — Rule 3 of the Superior Court Rules of Civil Procedure requires only the filing of a complaint to commence an action and thereby toll the statute of limitations of paragraph (8) of this section; any questions as to lack of diligence on the part of a plaintiff in obtaining service of process, pursuant to Rule 4 of the Superior Court Rules of Civil Procedure, are to be addressed by a motion filed pursuant to Rule 41(b) of the Superior Court Rules of Civil Procedure. *Varela v. Hi-Lo Powered Stirrups, Inc.*, App. D.C., 424 A.2d 61 (1980).

Doctrine of equitable tolling did not apply to toll statute of limitations in Superior Court action where prior suit filed in federal court asserting the same cause of action was dismissed for lack of subject matter jurisdiction. *Curtis v. Aluminum Ass'n*, App. D.C., 607 A.2d 509 (1992), *cert. denied*, — U.S. —, 113 S. Ct. 970, 122 L. Ed. 2d 125 (1993).

Filing complaint commences action for statute of limitation purposes. *Hobson v. Wilson*, 737 F.2d 1 (D.C. Cir. 1984), *cert. denied*, 470 U.S. 1084, 105 S. Ct. 1843, 85 L. Ed. 2d 142 (1985).

Determination of applicable statute of limitations where case transferred between federal courts. — See *Translinear, Inc. v. Republic of Haiti*, 538 F. Supp. 141 (D.C. Cir. 1982).

Statute of limitations defense raised in pre-trial motion. — When there is no substantial prejudice to the plaintiff, a defendant is not barred by Superior Court Civil Rule 8(c) from raising the statute of limitations in a pre-trial motion, even though the statute has not been raised in the defendant's answer to the complaint. *Whitener v. Washington Metropolitan Area Transit Auth.*, App. D.C., 505 A.2d 457 (1986).

Minnesota statutory period used to modify application of D.C. statutory period. — Where federal court usually borrows statute of limitation period of state in which federal court sits, federal Court of Appeals for District of Columbia circuit modified district court's application of three-year limitation on recovery of back pay in federal sex discrimination employment case against Minnesota corporation based on District of Columbia's three-year limitation on minimum wage claims and

"catch-all" claims by applying Minnesota two-year limitations governing discrimination claims. *Laffey v. Northwest Airlines*, 740 F.2d 1071 (D.C. Cir. 1984), cert. denied, 469 U.S. 1181, 105 S. Ct. 939, 83 L. Ed. 2d 951 (1985).

Action to redress breach of trust sounds in equity, and this section is inapplicable to such a suit. *Blankenship v. Boyle*, 329 F. Supp. 1089 (D.D.C. 1971), supplemental opinion, 337 F. Supp. 296 (D.D.C. 1972).

Distinct and unequivocal acknowledgment of debt as a personal obligation constitutes an implied promise to pay it and takes a contract out of this section. *Heffelfinger v. Gibson*, App. D.C., 290 A.2d 390 (1972).

Interpretation of contracts. — Causes of action based on contract interpretation should be deemed to accrue on the date on which plaintiff becomes or should become aware of the parties' differing interpretations. *Air Transp. Ass'n of Am. v. Lenkin*, 711 F. Supp. 25 (D.D.C. 1989), aff'd, 899 F.2d 1265 (D.C. Cir. 1990).

Constitutional torts. — The general statute of limitations provided in paragraph (8) of this section applies to constitutional torts. *Logiurato v. Action*, 490 F. Supp. 84 (D.D.C. 1980).

Cost of hospital services. — The District of Columbia is not barred by this section from recovering cost of hospitalization in an action against the patient's estate. *Cullen v. District of Columbia*, App. D.C., 221 A.2d 914 (1966).

The 3-year statute of limitations for bringing an action on a contract does not bar a hospital's claim for services rendered. *Evans v. Washington Hosp. Ctr., Inc.*, App. D.C., 298 A.2d 44 (1972).

Limitation periods for medical malpractice actions are 1 year for battery actions under paragraph (4) of this section and 3 years for those charging negligence. *Canterbury v. Spence*, 464 F.2d 772 (D.C. Cir.), cert. denied, 409 U.S. 1064, 93 S. Ct. 560, 34 L. Ed. 2d 518 (1969).

Where husband and wife sued a doctor for allegedly performing an unconsented-to tubal ligation upon the wife during a caesarean section delivery, this constituted a battery to which the 1-year statute of limitation applied and no cause of action for negligence arose thereon. *Kelton v. District of Columbia*, App. D.C., 413 A.2d 919 (1980).

Action against corporation's "alter ego" accrues at injury. — Plaintiff's cause of action against corporation's "alter ego" accrued when injurious actions allegedly occurred, not when court ruling in unrelated case held that defendant was corporation's alter ego. *Huntsman v. Park*, 112 WLR 657 (Super. Ct. 1984).

Note under seal. — Where a note upon which a suit is brought is under seal, the period of limitation is 12 years, and not 3 years on

simple contracts. *Ramey v. Burrascano*, App. D.C., 324 A.2d 687 (1974).

"Instrument under seal." — Merely signing one's name next to a preprinted word ("Seal") on a contract places an instrument "under seal" within the context of paragraph (6); a notary public's seal is not necessary. *Bankers Mut. Ins. Co. v. Davis*, 113 WLR 481 (Super. Ct. 1985).

In an action claiming royalties under contract, the 3-year statute of limitations does not bar claim with respect to royalties which accrue within the 3-year period prior to commencement of action, but only those payments that are due and not paid more than 3 years before plaintiffs brought suit. *Doolin v. Environmental Power Ltd.*, App. D.C., 360 A.2d 493 (1976).

Continuing trespass continues for 3 years after the encroachment has been removed, so that when the lessee files suit within 3 years of the removal of the encroachment, his recovery of damages resulting from trespass during the 3-year statutory period preceding the filing of a suit is not barred under this section. *L'Enfant Plaza E., Inc. v. John McShain, Inc.*, App. D.C., 359 A.2d 5 (1976), aff'd, App. D.C., 402 A.2d 1222 (1979).

Malicious interference with efforts to develop property, by false and malicious statements, constitutes not defamation but interference with expected economic advantages, and thus the 3-year limitation period applies rather than the 1-year period for defamation. *Carr v. Brown*, App. D.C., 395 A.2d 79 (1978).

Limitations most appropriate to determine backpay awards is 3 years. *Laffey v. Northwest Airlines*, 481 F. Supp. 199 (D.D.C. 1979), aff'd, 642 F.2d 578 (D.C. Cir. 1980).

Federal securities fraud cases. — The 3-year general fraud statute of limitations set forth in paragraph (8) of this section is applicable to a securities fraud claim which arose before the decision of *Forrestal Village, Inc. v. Graham*, 551 F.2d 411 (D.C. Cir. 1977), in which the Court of Appeals ruled that the 2-year blue sky law provision of § 2-2613(e) is applicable to such suits. *Wachovia Bank & Trust Co. v. National Student Mktg. Corp.*, 650 F.2d 342 (D.C. 1980), cert. denied, 452 U.S. 954, 101 S. Ct. 3099, 69 L. Ed. 2d 965 (1981).

Appellate review of tax refunds. — The deletion of a specific limitations period from § 47-3310(a), without substitution of a different specific limitations period, indicates a Congressional intent to allow the general 3-year limitations period of paragraph (8) of this section to apply to cases involving appeals for refunds of taxes. *Carter-Lanhardt, Inc. v. District of Columbia*, App. D.C., 413 A.2d 916 (1980).

Section does not run until demand made. — Where a demand is necessary to perfect a cause of action, this section does not start to run until a demand is made. *Nyhus v. Travel Mgt. Corp.*, 466 F.2d 440 (D.C. Cir. 1972).

Limitation runs from date of last account entry. — The 3-year limitation period under this section begins running from the date of the last entry in a running account. *E.P. Hinkel & Co. v. Washington Carpet Corp.*, App. D.C., 212 A.2d 328 (1965).

A claim for defamation has a one-year statute of limitations. *Construction Interior Sys. v. Donohoe Cos.*, 813 F. Supp. 29 (D.D.C. 1992).

Action for fraud. — This section begins to run only upon discovery of facts out of which the claim arises or at a time such facts should reasonably be ascertained in the exercise of due diligence. *Fontana v. Aetna Cas. & Sur. Co.*, 363 F.2d 297 (D.C. Cir. 1966).

Actions involving allegations of fraud must be brought within 3 years from the time the fraud either is discovered or reasonably should have been discovered. *King v. Kitchen Magic, Inc.*, App. D.C., 391 A.2d 1184 (1978); *Rothenberg v. Ralph D. Kaiser Co.*, 173 Bankr. 4 (Bankr. D.D.C. 1994).

When one person defrauds another, there will be a delay between the time the fraud is perpetrated and the time the victim awakens to the fact. Accordingly, in a fraud case, the statute of limitations will not begin running until the date the fraud is discovered, or reasonably should have been discovered, and it is for the jury to decide when plaintiff discovered, or reasonably should have discovered, the fraud. *Kropinski v. World Plan Executive Council* — US, 853 F.2d 948 (D.C. Cir. 1988).

Where plaintiff discovered a possible fraudulent conveyance, it initiated action in a timely fashion. *M.M. & G., Inc. v. Jackson*, App. D.C., 612 A.2d 186 (1992).

In a case in which a plaintiff alleged that she was defrauded, the reasonableness of a plaintiff's lack of awareness of injury necessarily depends on whether reliance on the alleged fraud was "reasonable" in the context of the law of misrepresentation. *Goldman v. Bequai*, App. D.C., 19 F.3d 666 (1994).

The law of misrepresentation provides that a fact-finder must take into account a plaintiff's specific situation. *Goldman v. Bequai*, App. D.C., 19 F.3d 666 (1994).

Statutes tolled until such time as misrepresentation should have been discovered. — The statutes of limitation are tolled in cases involving misrepresentation, even if that misrepresentation does not hide the cause of action itself, until such time as the misrepresentation should have been discovered.

Richards v. Mileski, 662 F.2d 65 (D.C. Cir. 1981).

Once tolled by a positive act of concealment or a misrepresentation, the statute of limitations does not begin to run until the plaintiff discovers or should have discovered the wrong. *Friedman v. Manfuso*, 620 F. Supp. 109 (D.D.C. 1985).

Action barred where plaintiff failed to exercise due diligence. — A cause of action is not barred by the statutes of limitation unless the facts show that the plaintiff failed to exercise due diligence in discovering the material facts underlying his cause of action. *Richards v. Mileski*, 662 F.2d 65 (D.C. Cir. 1981).

Action for personal injury. — Time for bringing action for recovery for personal injuries is 3 years from the time the right to maintain the action accrues. *Alley v. Dodge Hotel*, 501 F.2d 880 (D.C. Cir. 1974), *aff'd*, 551 F.2d 442 (D.C. Cir. 1976), *cert. denied*, 431 U.S. 958, 97 S. Ct. 2684, 53 L. Ed. 2d 277 (1977).

The statute of limitations for a claim for personal injury based on negligent manufacturing, products liability, breach of warranty and misrepresentation is 3 years. *Dawson v. Eli Lilly & Co.*, 543 F. Supp. 1330 (D.D.C. 1982).

Tort action accrues on date of injury. — This section begins to run, for a tort, on the date of the injury. *Shehyn v. District of Columbia*, App. D.C., 392 A.2d 1008 (1978).

Ordinarily, a plaintiff's cause of action accrues at the time he suffers the injury alleged. The general rule is modified, however, when the relationship between the fact of injury and some tortious conduct is obscure at the time of the injury. *Nelson v. American Nat'l Red Cross*, 26 F.3d 193 (D.C. Cir. 1994).

Ongoing tort. — Where a plaintiff sues based on an allegedly ongoing tort, the cause of action does not accrue until the tortious activity has ceased. *Logiurato v. Action*, 490 F. Supp. 84 (D.D.C. 1980).

Under the continuing tort doctrine, the statute of limitations does not start to run when a plaintiff knows or should have known about the defendants' actions. Rather, the cause of action accrues, and the limitations period begins to run, at the time the tortious conduct ceases. *Rochon v. FBI*, 691 F. Supp. 1548 (D.D.C. 1988).

Continuing tort. — Where wrongs amount to a "continuing tort," plaintiff will be able to recover for injuries resulting from all wrongs by the defendant, as long as some of them occurred within the limitation period. *Perkins v. Nash*, 697 F. Supp. 527 (D.D.C. 1988).

Cause of action for ordinary negligence accrues when the plaintiff suffers injury. *Weisberg v. Williams, Connolly & Califano*, App. D.C., 390 A.2d 992 (1978).

Cause of action accrues for limitations purposes not when the injury first occurred, but when the plaintiff discovered, or by the

exercise of due diligence should have discovered, the facts giving rise to her claim. *Dawson v. Eli Lilly & Co.*, 543 F. Supp. 1330 (D.D.C. 1982).

Accrual of cause of action where causation of injury unknown. — Where causation of an injury is unknown, the action accrues when both the injury and its cause have been, or should have been, discovered. *Dawson v. Eli Lilly & Co.*, 543 F. Supp. 1330 (D.D.C. 1982).

Accrual where both injury and causation known, but wrongdoing unknown. — Where the injury and causation are known, but not that there has been any wrongdoing, the action is held to accrue when the plaintiff discovered, or by due diligence should have discovered, the wrongdoing. *Dawson v. Eli Lilly & Co.*, 543 F. Supp. 1330 (D.D.C. 1982).

The statute of limitations period for negligence claims begins to run when the plaintiff suffers injury. *Prouty v. National R.R. Passenger Corp.*, 572 F. Supp. 200 (D.D.C. 1983).

Deferral until further complications occur not permitted. — There is no precedent for the position that a plaintiff whose action has accrued, and who has already suffered grievous injury, may defer suit until further complications develop. *Colbert v. Georgetown Univ.*, App. D.C., 641 A.2d 469 (1994).

Same principles govern accrual of legal malpractice action as govern other negligence actions. *Weisberg v. Williams, Connolly & Califano*, App. D.C., 390 A.2d 992 (1978).

A claim for legal malpractice accrues when the plaintiff-client suffers actual injury. *Hunt v. Bittman*, 482 F. Supp. 1017 (D.D.C.), *aff'd*, 652 F.2d 196 (D.C. Cir. 1980), *cert. denied*, 454 U.S. 860, 102 S. Ct. 315, 70 L. Ed. 2d 158 (1981).

In determining when a legal malpractice claim accrues, the District of Columbia follows the so-called "injury" rule, under which a claim for legal malpractice accrues when the plaintiff-client suffers actual injury, not when the act causing the injury occurs. *Byers v. Bursleson*, 713 F.2d 856 (D.C. Cir. 1983).

The "discovery rule" is applicable to determine when the statute of limitations begins to run with respect to legal malpractice claims. *Knight v. Furlow*, App. D.C., 553 A.2d 1232 (1989).

Resolution of an appeal is not the critical event for ripeness of a legal malpractice claim. The key issues are client knowledge of some injury, its cause, and related wrongdoing. *Knight v. Furlow*, App. D.C., 553 A.2d 1232 (1989).

Attorney's fees and court costs incurred in defending will and appealing its invalidation constituted sufficient injury for the statute of limitations to bar a legal malpractice action when the plaintiff knew, or had reason to know, of his attorney's alleged malpractice in drafting the will well over three years before he filed

suit. *Knight v. Furlow*, App. D.C., 553 A.2d 1232 (1989).

Legal malpractice in a criminal proceeding. — A cause of action for malpractice in a criminal proceeding ordinarily would accrue upon the date of judgment when sentence is imposed. *Brown v. Jonz*, App. D.C., 572 A.2d 455 (1990).

Because the statute of limitations governing plaintiff's claim for legal malpractice was tolled pursuant to § 12-302(a)(3) due to his imprisonment at the time his cause of action accrued, trial court erred in dismissing his claim. *Brown v. Jonz*, App. D.C., 572 A.2d 455 (1990).

Medical malpractice actions. — This section begins to run when the patient becomes aware, or should have become aware, that a foreign object has been left in his wound by the surgeon and not at the moment when the surgeon closes the wound. *Burke v. Washington Hosp. Ctr.*, 293 F. Supp. 1328 (D.D.C. 1968).

An action, which was instituted more than 3 years after an alleged negligent performance of surgery on the decedent, that was alleged to have resulted in decedent's death, was not barred by the 3-year statute of limitations, if, as alleged by the plaintiff, the negligence was not discovered until 1 week before the decedent died, and within the 3-year period. *Jones v. Rogers Mem. Hosp.*, 442 F.2d 773 (D.C. Cir. 1971).

In all medical malpractice actions, the cause of action accrues when the plaintiff knows or through the exercise of due diligence should have known of the injury. *Burns v. Bell*, App. D.C., 409 A.2d 614 (1979); *Stager v. Schneider*, App. D.C., 494 A.2d 1307 (1985).

Under the "discovery rule" which has been applied in cases of medical malpractice, the statute of limitations begins to run when the plaintiff learned, or in the exercise of reasonable diligence could have learned, that his injuries were caused by defendants' actions. *Fearson v. Johns-Manville Sales Corp.*, 525 F. Supp. 671 (D.D.C. 1981).

An action for medical malpractice against a dentist must be brought within three years of the time of the injury, or within three years from the time the injured party knew or should have known of the injury. *Allen v. Hill*, App. D.C., 626 A.2d 875 (1993).

Plaintiff's cause of action accrued no later than when she was informed by the fourth dentist that examined her that she needed surgery to remove the Sargentine paste allegedly used by defendant. At that time, appellant knew of the full extent of her injury, the overfill and the alleged use of a carcinogen. *Allen v. Hill*, App. D.C., 626 A.2d 875 (1993).

Accrual of cause of action. — In the District of Columbia, a cause of action does not accrue until the time when both (1) the plaintiff at least "should have known" of the defendants'

actions, and (2) the plaintiff has suffered actual injury. *Farmer v. Mount Vernon Realty, Inc.*, 720 F. Supp. 223 (D.D.C. 1989), *aff'd*, 983 F.2d 298 (D.C. Cir. 1993).

Under controlling District of Columbia precedents, the right to maintain an action for injury to the person accrues when injury results from a prospective defendant's wrongful conduct. But when the fact of injury is not readily apparent and might not become apparent for several years after the incident-causing injury has occurred, the District of Columbia courts follow the so-called "discovery rule" by which the limitations period will not commence to run until the injury ought to be apparent, or when the plaintiff knows or through the exercise of due diligence should have known of the injury. *Farris v. Compton*, 802 F. Supp. 487 (D.D.C. 1992).

Suit brought by the District to vindicate public rights immune from running of statutes of limitation. — The District of Columbia is immune from the running of the statutes of limitation and repose when it brings suit seeking to vindicate public rights and involving the performance of public functions. *District of Columbia v. Owens-Corning Fiberglas Corp.*, App. D.C., 572 A.2d 394 (1989), *cert. denied*, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

In its municipal capacity, the District enjoys a common-law immunity under the doctrine of *nullum tempus* which expresses a legitimate public policy of preserving public rights, revenues, and property from injury or loss, by the negligence of public officers; and, although this is sometimes called a prerogative right, it is in fact nothing more than a reservation, or exception, introduced for the public benefit, and equally applicable to all governments. *District of Columbia v. Owens-Corning Fiberglas Corp.*, App. D.C., 572 A.2d 394 (1989), *cert. denied*, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

Where the District acquires a right of action directly related to its duty to perform a service to the public, or to vindicate an overwhelmingly public interest or right, a suit to recover money damages to enable the District to perform that service is public rather than proprietary and falls within the highly circumscribed municipal immunity from the running of time. *District of Columbia v. Owens-Corning Fiberglas Corp.*, App. D.C., 572 A.2d 394 (1989), *cert. denied*, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

Because the District of Columbia enjoys a limited municipal immunity from the effects of the statutes of limitation and repose, and it is a governmental function of the District to remove and abate the widespread contamination of public buildings with asbestos, which poses a substantial threat to public health, the District

may bring an action for damages resulting from that contamination even after the statutes of limitations and repose would ordinarily have run. *District of Columbia v. Owens-Corning Fiberglas Corp.*, App. D.C., 572 A.2d 394 (1989), *cert. denied*, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

Discovery rule elements. — District of Columbia law applies the "discovery rule" to determine when a tort action accrues, absent equitable tolling. *Goldman v. Bequai*, App. D.C., 19 F.3d 666 (1994).

For a cause of action to accrue where the discovery rule is applicable, one must know or by the exercise of reasonable diligence should know of the injury, its cause in fact, and of some evidence of wrongdoing. *Bussineau v. President & Dirs. of Georgetown College*, App. D.C., 518 A.2d 423 (1986); *Duggan v. Keto*, App. D.C., 554 A.2d 1126 (1989).

Application of the discovery rule exception to the statute of limitations is not limited to licensed professionals. *Shamloo v. Lifespring, Inc.*, 713 F. Supp. 14 (D.D.C. 1989).

Discovery rule exception to statute of limitations was available to plaintiff who suffered psychological problems allegedly as a result of the defendant's classes or treatments. *Shamloo v. Lifespring, Inc.*, 713 F. Supp. 14 (D.D.C. 1989).

Factors determining applicability of discovery rule. — In each of the categories of cases in which the District of Columbia Court of Appeals has allowed the discovery rule to extend the interval between a defendant's wrongful conduct and the temporal deadline fixed by statute for a plaintiff to file an action to recover for it, two factors have been present: (1) a relationship between the plaintiff and defendant at the time the wrong was committed that justified the former's reliance upon the latter's skill or superior knowledge to refrain from causing harm; and (2) a perceptible or palpable injury, the existence of which a trier of fact can independently and objectively verify at time of trial. *Farris v. Compton*, 802 F. Supp. 487 (D.D.C. 1992).

Discovery rule with respect to HIV cases. — A plaintiff is injured when he becomes Human Immunodeficiency Virus (HIV) positive and the statute of limitations begins to run as soon as the plaintiff discovers his injury through an HIV positive test result. *Nelson v. American Nat'l Red Cross*, 26 F.3d 193 (D.C. Cir. 1994).

Decedent should have known he had suffered a legally cognizable injury when he was told he was Human Immunodeficiency Virus (HIV) positive. His reaction to physician's disclosure manifested that he was aware of the defendants' potential liability. *Nelson v. American Nat'l Red Cross*, 26 F.3d 193 (D.C. Cir. 1994).

Discovery rule exception not allowed. — The discovery rule exception was not allowed where plaintiff claimed a crack in his painting was due to the mounting techniques used by the defendant nearly eleven years earlier. *O'Hearn v. Parsons*, 119 WLR 277 (Super. Ct. 1991).

The discovery rule factors were not to be found in a case where the sexual abuse of which the plaintiffs accused the defendant continued far beyond their childhood years when it might have been reasonable to assume that they were unaware of its wrongful character or how to stop it; where it was, moreover, being perpetrated by a sibling not much older than they, not a person in loco parentis; and where finally, the resultant injury for which damages were sought was psychic alone. Expert testimony might have proven the existence of the plaintiffs' subjective beliefs as to the cause of their distress, but it could have no assurance that those beliefs were grounded in reality. *Farris v. Compton*, 802 F. Supp. 487 (D.D.C. 1992).

When action accrues under discovery rule. — Under the discovery rule, a cause of action accrues when the plaintiff must know or by the exercise of reasonable diligence should know (1) of the injury, (2) its cause in fact, and (3) some evidence of wrongdoing. *Nelson v. American Nat'l Red Cross*, 26 F.3d 193 (D.C. Cir. 1994).

Discovery rule inapplicable. — Where plaintiff sued depository bank for breach of contract and conversion in opening corporate account at request of plaintiff's employee without documentation and taking checks on forged or missing endorsements, discovery rule did not toll statute of limitations as ordinary business could have detected siphoning-off of funds within a three-year period of their conversion without hiring another professional, deficiency was not latent, balance of interests favored defendant concerning accrual of cause of action in conversion, and judicial economy favors adjudication of more timely complaints for conversion claims. *Kuwait Airways Corp. v. American Sec. Bank*, 890 F.2d 456 (D.C. Cir. 1989).

Evidentiary claims regarding failure to discover injury would have served to toll the statute of limitations if proven at trial. *Goldman v. Bequai*, App. D.C., 19 F.3d 666 (1994).

Prompt notice. — Where plaintiff gave prompt notice of its adverse claim to the only claimant of whom it had specific knowledge, the purchase of this property by the innocent was not attributable to delay by plaintiff, so that plaintiff's failure to file a lis pendens notice under former § 21-1507 was not dispositive of the innocent purchaser's rights, since plaintiff had no duty to warn buyers of whom it was not aware. *M.M. & G., Inc. v. Jackson*, App. D.C., 612 A.2d 186 (1992).

Diagnosis of "mild asbestosis" does not start limitations clock on victim's right to sue for mesothelioma, a separate and distinct disease, which was attributable to the same asbestos exposure, but which was not manifested until 5 years after the date of the asbestosis diagnosis. *Wilson v. Johns-Manville Sales Corp.*, 684 F.2d 111 (D.C. Cir. 1982).

Plaintiff-patient's husband, who married her after alleged medical malpractice occurred, had justiciable claim for consortium, where the marriage took place before plaintiff knew or by the exercise of due diligence should have known of the injury. *Stager v. Schneider*, App. D.C., 494 A.2d 1307 (1985).

Action for nondelivery of property sold. — Where the parties to a sales contract intended the physical delivery of the subject property to be on demand, the buyer's cause of action accrued only upon the refusal of the collector of the seller's estate to relinquish possession of the property after the seller's death. *Neves v. Riley*, 447 F. Supp. 306 (D.D.C. 1978).

Cause of action for return of property subject to bailment agreement for an indefinite term does not arise until demand has been made and refused; the death of the bailor does not trigger a duty to demand delivery. *Johnston v. Industrial Nat'l Bank*, App. D.C., 450 A.2d 414 (1982).

Action for refund of monies paid. — Where plaintiff's action is for a refund of monies paid, the injury occurs when that money is actually paid. Accordingly, the statute of limitations runs separately for each payment. *Woodruff v. McConkey*, App. D.C., 524 A.2d 722 (1987).

Limitation runs from date crime alleged committed. — Where 3-year limitation was applied to a case for which no more specific limitation is applied, the 3 years run from the last possible date on or before which crime was alleged. *Hagmeyer v. United States Dep't of Treas.*, 647 F. Supp. 1300 (D.D.C. 1986).

Action for breach of contract, including breach of warranty, runs from the time of the breach or completion of the contract. *Sears, Roebuck & Co. v. Goudie*, App. D.C., 290 A.2d 826, cert. denied, 409 U.S. 1049, 93 S. Ct. 523, 34 L. Ed. 2d 501 (1972).

This section begins to run when a contract is breached. *Western Union Tel. Co. v. Massman Constr. Co.*, App. D.C., 402 A.2d 1275 (1979).

The statute of limitations for breach of contract actions begins to run from the time of breach. *Prouty v. National R.R. Passenger Corp.*, 572 F. Supp. 200 (D.D.C. 1983).

Where insurance company sent plaintiff a letter notifying him that his benefits would be terminated in two years because his main disabling condition was psychological, or sooner if plaintiff recovered, breach of contract did not

occur and limitations period on contract action did not begin to run until insurance company ceased making payments. *Askins v. Washington Metro. Area Transit Auth.*, 729 F. Supp. 903 (D.D.C. 1990).

The statute of limitations for an express or implied contract is three years under paragraph (7). Therefore, claims for breach of the implied warranty of habitability, breach of the duty to make repairs, and breach of the covenant of quiet enjoyment are properly limited to the events that occurred within the three years of the commencement of the action. *Hawkins v. Greenfield*, 797 F. Supp. 30 (D.D.C. 1992).

Where parties negotiated for one contract price to cover the cost of refurbishing 262 hotel rooms and seven corridors at a hotel, but where the contract was later broken down into a work schedule which set targets for the rate at which the renovations would be completed and provided for interim payments, the work schedules and interim payment plan were not separate contracts for statute of limitations purposes on a breach of contract claim. *Construction Interior Sys. v. Donohoe Cos.*, 813 F. Supp. 29 (D.D.C. 1992).

Equitable claims arising from breach of contract. — The statute of limitations for breach of contract claims also applies to any equitable claims, such as unjust enrichment, arising from the same conduct. *Construction Interior Sys. v. Donohoe Cos.*, 813 F. Supp. 29 (D.D.C. 1992).

Action for fraud and breach of contract. — In a fraud and breach of contract action, the statutory limitations period began to run at the time the employee's resignation became effective, not at the time the registration was submitted. *Computer Data Sys. v. Kleinberg*, 759 F. Supp. 10 (D.D.C. 1990).

Adverse possession action. — Possession and use by plaintiff of the disputed property for 30 years was actual, open and notorious, exclusive, continuous and hostile, and plaintiff proved her claim for adverse possession of the disputed strip of land, 30 inches in width. *Ifft v. Trimble*, 120 WLR 1577 (Super. Ct. 1992).

Loan to be repaid on demand. — Where the uncontroverted facts show a loan of money to be repaid on demand at a specified time, the statute begins to run at the time the demand is made. *Dilbeck v. Murphy*, App. D.C., 502 A.2d 466 (1985).

Covenant not to sue is subject to a 12-year statute of limitations under paragraph (6) of this section, rather than the 3-year statute of limitations for contracts under paragraph (8). *Spellman v. American Sec. Bank*, App. D.C., 504 A.2d 1119 (1986).

Action by contractor to recover against subcontractor. — The 3-year period of limitations governing a contractor's right to recover against a subcontractor begins on the date the

damage recurred. *Fowler v. A & A Co.*, App. D.C., 262 A.2d 344 (1970).

Claim based on unlicensed status of contractor. — The provisions for the licensing of home improvement contractors, § 2-501 et seq., do not contain their own statute of limitations or provide that no statute of limitations shall apply. Therefore, the general limitations statute, paragraph (8) of this section, would ordinarily apply. Alternatively, an action for the refund of monies paid pursuant to a void contract is in the nature of a suit in contract and would be treated under the same statute of limitations period. Paragraph (7) of this section sets the limitations period for an action based "on a simple contract, express or implied" at 3 years. *Woodruff v. McConkey*, App. D.C., 524 A.2d 722 (1987).

The discovery rule should not apply to claims based on the unlicensed status of the contractor. The discovery rule thus far has been applied only in cases involving professional negligence or malpractice. *Woodruff v. McConkey*, App. D.C., 524 A.2d 722 (1987).

Where the failure to obtain a license is the basis of claims, it is not an act of fraudulent concealment that would toll the statute of limitations. *Woodruff v. McConkey*, App. D.C., 524 A.2d 722 (1987).

In action based upon tort and contract claims arising out of allegedly deficient design and construction of addition to house, the cause of action does not accrue until the plaintiff knows, or in the exercise of reasonable diligence should know, of the injury. *Ehrenhaft v. Malcolm Price, Inc.*, App. D.C., 483 A.2d 1192 (1984).

Buyout agreement between cofounders of corporation. — Where there was an agreement between cofounders of a corporation that upon the death of one, the surviving cofounder could buy out the shares of the other, the breach, if there was one, for the purposes of the running of the 3-year limitation period under this section, began with the death of the founder and the cofounder's request to purchase the stock, which was refused. *Launay v. Launay, Inc.*, App. D.C., 497 A.2d 443 (1985).

Limitations runs on action for accounting and settlement only after sufficient time to comply has elapsed. — Where a demand for an accounting has been made in connection with the dissolution of a partnership, the limitations period commences to run for an action between the partners for an accounting and settlement only after a sufficient time has elapsed after such demand to enable those on whom it has been made to comply. *Warren v. Chapman*, App. D.C., 535 A.2d 856 (1987).

Malicious prosecution actions begin to run from the time the underlying criminal or civil action is disposed of in favor of the mali-

cious prosecution plaintiff. *Shulman v. Miskell*, 626 F.2d 173 (D.C. Cir. 1980).

Action for fraud and tortious interference. — The statute of limitations for common law fraud and tortious interference claims is three years; thus, where plaintiffs filed their action on September 19, 1990, if the cause of action accrued prior to September 19, 1987, then the action was time-barred unless fraudulent concealment by defendants tolled the statute of limitations. *Jones v. Meridian Towers Apts., Inc.*, 816 F. Supp. 762 (D.D.C. 1993).

Fraudulent concealment of information a moving party needs in order to determine whether there is a litigable dispute tolls the running of this section on an action for wrongful death. *Emmett v. Eastern Dispensary & Cas. Hosp.*, 396 F.2d 931 (D.C. Cir. 1967).

Fraudulent concealment requires act tending to conceal cause of action. — Under the law of the District of Columbia, fraudulent concealment requires that the defendant commit some positive act tending to conceal the cause of action from the plaintiff, although any word or act tending to suppress the truth is enough. *Richards v. Mileski*, 662 F.2d 65 (D.C. Cir. 1981).

Plaintiff's unsupported conclusory assertions are insufficient to establish the existence of fraudulent concealment of cause of actions by defendants to toll running of statute. *Burda v. National Ass'n of Postal Supvrs.*, 592 F. Supp. 273 (D.D.C. 1984), *aff'd*, 771 F.2d 1555 (D.C. Cir. 1985).

Fraudulent concealment of the existence of a cause of action tolls the running of this section for as long as the concealment endures. *Weisberg v. Williams, Connolly & Califano*, App. D.C., 390 A.2d 992 (1978).

Regardless of whether federal or local District of Columbia law should apply to the equitable tolling of the limitations on a civil rights action brought in federal court in District of Columbia, the statute of limitations was tolled where defendants fraudulently concealed their actions and failed to prove lack of due diligence on part of plaintiffs to discover the wrong; where some plaintiffs knew of the actions of some of the defendants more than three years before filing suit, those actions were barred. *Hobson v. Wilson*, 737 F.2d 1 (D.C. Cir. 1984), *cert. denied*, 470 U.S. 1084, 105 S. Ct. 1843, 85 L. Ed. 2d 142 (1985).

Material contested issue of fact — whether concealment by attorney of pre-trial order had occurred — was sufficiently presented to preclude the grant of attorney's motion to dismiss on basis of statute of limitations. *Norfleet v. Rosen*, App. D.C., 539 A.2d 1089 (1988).

Tortfeasor's failure to file accident report and concealment of his identity does not toll the running of limitation period under

this section. *Estate of Chappelle v. Sanders*, App. D.C., 442 A.2d 157 (1982).

Statute tolled until tortfeasor's identity known. — Statute of limitations begins to run when identity of tortfeasor is known. *Eldridge v. Burrows*, 112 WLR 605 (Super. Ct. 1984).

Fraudulent concealment of information. — Where the party asserting the statute of limitations is found to have fraudulently concealed information needed to determine whether there is a basis for litigation, that party will be estopped from asserting the statute. *Bailey v. Greenberg*, App. D.C., 516 A.2d 934 (1986).

Claimant lulled into not filing suit by misleading statements of insurance company. — It was error to grant summary judgment to insurance company where insurance company had assured claimant and her attorney that her claim was being processed until after the statute had run. *Bailey v. Greenberg*, App. D.C., 516 A.2d 934 (1986).

Defense to claim of fraudulent concealment. — A defense to a claim that fraudulent concealment of the existence of a cause of action tolls this section is that the plaintiff knew, or by the exercise of due diligence could have known, that he may have had a cause of action. *Weisberg v. Williams, Connolly & Califano*, App. D.C., 390 A.2d 992 (1978).

Action for child support. — A child's right to maintain an action for child support is available to him or her throughout her minority, and the applicable limitation period does not begin to run until the child reaches the age of majority; additionally, absent a specific statutory limitation period, the general three-year period will apply. *Davis v. Davis*, 121 WLR 1721 (Super. Ct. 1993).

Action for return of retainer agreement. — In an action for return of part of a retainer agreement, the statute of limitations began to run with the receipt of a letter in which the subject law firm refused a demand to return the retainer. *Kerns v. Ameriprint, Inc.*, App. D.C., 621 A.2d 381 (1993).

Racketeer Influenced and Corrupt Organizations actions. — The 3-year fraud statute of limitations applied to an action under RICO rather than the 1-year statute for the recovery of usurious interest. *Lawson v. Nationwide Mtg. Corp.*, 628 F. Supp. 804 (D.D.C. 1986); *Clouser v. Temporaries, Inc.*, 730 F. Supp. 1127 (D.D.C. 1989).

The statute of limitations governing Racketeer Influenced and Corrupt Organizations Act cause of action was the 3-year statute of limitations which applies to "the recovery of damages for an injury to real or personal property." *Bender v. Rocky Mt. Drilling Assocs.*, 648 F. Supp. 330 (D.D.C. 1986).

Cause of action by vendor against purchaser for reimbursement of sales taxes

paid by the vendor under § 47-2003 is subject to the 3-year limitations period of subdivision (8). *J. Frogg, Ltd. v. Khambata*, 117 WLR 293 (Super. Ct. 1989).

Actions under the Education of the Handicapped Act. — For purposes of borrowing an appropriate statute of limitation, actions brought under § 14-415(e)(2) of the Education of the Handicapped Act (20 U.S.C. § 1415) are more analogous to appeals from administrative agencies than to causes of action for which a limitation period is not otherwise specially prescribed. *Spiegler v. District of Columbia*, 866 F.2d 461 (D.C. Cir. 1989).

Cause of action for conversion of certificate of deposit purchased with joint venture assets accrued when some of joint venturers, without the knowledge or permission of the other coventurers, pledged the CD as security for an unrelated loan, and the periodic renewal of the CD did not toll the running of the statute of limitations. *Forte v. Goldstein*, App. D.C., 461 A.2d 469 (1983).

Limitations period for dividends. — Where defendant could not have breached its obligation to pay the warrant holders the same compensation as it paid shareholders until the latter amount was firmly set, and where the warrant holders would have harbored legitimate uncertainty as to that amount until the shareholders were actually paid the cash dividend, on plaintiff's claim to the cash dividend itself was timely. *Gandal v. Telemundo Group, Inc.*, 23 F.3d 539 (D.C. Cir. 1994).

Customer actions against stockbrokers. — While a customer is entitled to place great trust and reliance in his stockbroker, and he may sue upon its breach, the customer's trust may not be blind for purposes of tolling the statute of limitations. *Filloramo v. Johnston, Lemon & Co.*, 700 F. Supp. 572 (D.D.C. 1988).

While a broker's continuing assurances might toll the running of the statute even in the presence of a falling market, they will not always do so. *Filloramo v. Johnston, Lemon & Co.*, 700 F. Supp. 572 (D.D.C. 1988).

Bankruptcy trustee's compensation. — In a proceeding to determine whether a bankruptcy trustee could recover interim compensation paid to the debtors' former counsel due to the administrative insolvency of the estate, the three-year statute of limitations under paragraph (8) of this section was inapplicable. *Guinee v. Toombs*, 170 Bankr. 1 (Bankr. D.D.C. 1994).

Claim for breach of warranty is governed by this section. *Hoffa v. Fitzsimmons*, 673 F.2d 1345 (D.C. Cir. 1982).

Action for breach of apartment lease governed by paragraph (7). — Action in Small Claims and Conciliation Branch of the Superior Court for damages resultant from an alleged breach of an apartment lease is a con-

tract action governed by the limitation of paragraph (7) of this section. *Management Partnership, Inc. v. Crumlin*, App. D.C., 423 A.2d 939 (1980).

Action by investor against bank's subsidiary. — Where investor brought action based on misconduct of bank's subsidiary in bookkeeping and clearinghouse functions and investor's churning, the statute of limitations began to run when investor received the ledger that showed the trades made in the account. *Pyramid Sec. Ltd. v. IB Resolution, Inc.*, 924 F.2d 1114 (D.C. Cir. 1991), cert. denied, — U.S. —, 112 S. Ct. 85, 116 L. Ed. 2d 57 (1991).

Date of publication. — Under the single publication rule, the date of publication for an article reprinted from *Glamour* magazine, for distribution to members of a private organization, was the date they were "published," i.e. the date the first copies were distributed. *Foretich v. Glamour*, 753 F. Supp. 955 (D.D.C. 1990).

Enforcement of utility company tariff. — The District Public Service Commission's conclusion that expiration of the statute of limitations did not bar gas light company from enforcing the terms of its tariff, permitting it to condition restoration of service on payment of prior indebtedness, was reasonable. *Jackson v. Public Serv. Comm'n*, App. D.C., 590 A.2d 517 (1991).

Negligent training or supervision of police officers. — Three-year residual statute of limitations applies to plaintiff's claim of negligent supervision or training of police officers, even if the negligent conduct of the District resulted in an intentional tort by the police. *Hunter v. District of Columbia*, 943 F.2d 69 (D.C. Cir. 1991).

Employment discrimination action. — In an employment discrimination suit the 3-year limitation period for general torts under paragraph (8) was used, rather than the 1-year limitation period for intentional torts under paragraph (4). *Saunders v. George Wash. Univ.*, 768 F. Supp. 854 (D.D.C. 1991).

Arbitration claims. — An action under the District of Columbia Uniform Arbitration Act to compel arbitration was considered an action in contract, its limitation period therefore being governed by paragraph (7) of this section. *Communications Workers v. AT & T*, 10 F.3d 887 (D.C. Cir. 1993).

Labor relations claims. — In an action brought by a union under § 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185, seeking to compel company to engage in arbitration concerning a grievance filed on behalf of an employee, the applicable law was the six-month federal statute of limitations borrowed from § 10(b) of the National Labor Relations Act (NLRA), 29 U.S.C. § 160(b), not the statutory period governing contracts in para-

graph(7). *Communications Workers v. AT & T*, 10 F.3d 887 (D.C. Cir. 1993).

Constructive trust actions. — As distinguishable from a suit over a discrete event, an equitable action involving property rights is not so time-sensitive, and this is reflected in the fact that neither subsection (1) nor subsection (8) is strictly applicable to constructive trust actions. Rather, the guiding principle is one of laches. *Granville v. Hunt*, App. D.C., 566 A.2d 65 (1989).

Abuse of process. — The time period for filing an abuse of process action is three years. *Rothenberg v. Ralph D. Kaiser Co.*, 173 Bankr. 4 (Bankr. D.D.C. 1994).

Civil rights violation repose period governed by paragraph (8). — Three-year limitations period in paragraph (8) of this section governs the period of repose for actions alleging violation of constitutional rights brought under the Civil Rights Act. *Hobson v. Wilson*, 737 F.2d 1 (D.C. Cir. 1984), cert. denied, 470 U.S. 1084, 105 S. Ct. 1843, 85 L. Ed. 2d 142 (1985).

Federal civil rights actions. — The 3-year statute under paragraph (8) applies to actions under § 1981 of the Federal Civil Rights Act (42 U.S.C. § 1981) rather than the 1-year limit in paragraph (4) resolving a noted former split in authority within the circuit. *Banks v. C & P Tel. Co.*, 802 F.2d 1416 (D.C. Cir. 1986).

The most general provision, the catchall provision of paragraph (8) of this section, was applicable to an action under 42 U.S.C. § 1983 rather than trying to pick a statute of limitations that fit the particular action. *Greenfield v. District of Columbia*, 623 F. Supp. 47 (D.D.C. 1985).

The 3-year limitation under paragraph (8) of this section applies to actions under 42 U.S.C. § 1985(3). *Hobson v. Brennan*, 625 F. Supp. 459 (D.D.C. 1985); *Pope v. Bond*, 641 F. Supp. 489 (D.D.C. 1986).

Claims under 42 U.S.C. § 1981 are governed by the 3-year period for personal injuries of subdivision (8). *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988).

Defamation of action barred. — Where plaintiff alleged that defendants published defamatory remarks between 1988 and 1990, but where the civil action was not filed until February 27, 1992, the claims are clearly outside the one-year bar. *Wiggins v. Philip Morris, Inc.*, 853 F. Supp. 458 (D.D.C. 1994).

Conversion action. — Unlike many medical or legal malpractice cases and latent-disease cases in which the injury is not manifested until long after the unlawful act, the injury to the payee in a conversion case manifests itself at the time the wrongful act occurs — that is, when the forger deposits or cashes the check, and is not latent. *Kuwait Airways Corp. v. American Sec. Bank*, 890 F.2d 456 (D.C. Cir. 1989).

Pendency of negligence action in federal court did not toll statute of limitations with regard to identical action filed by plaintiff in Superior Court after expiration of three-year limitations period. *Bond v. Serano*, App. D.C., 566 A.2d 47 (1989).

Limitations period governing plaintiffs' claims of civil conspiracy is established by the statute of limitations governing the underlying tort; thus, the complaint's allegations of a conspiracy by defendants to libel and assault plaintiffs are also subject to the one-year period set out in paragraph (4). *Thomas v. News World Communications*, 681 F. Supp. 55 (D.D.C. 1988).

Limitations tolled while actions before Office of Human Rights. — The statute of limitations under the D.C. Human Rights Act is tolled during the pendency of an action before Office of Human Rights. *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988).

Actions under 42 U.S.C. § 1983. — Limitations period in paragraph (4) for intentional personal injury should be applied to 42 U.S.C. § 1983 causes of action. *Williams v. District of Columbia*, 676 F. Supp. 329 (D.D.C. 1987).

Paragraph (8) applied to a claim under 42 U.S.C. § 1983 because the District has multiple statutes of limitations for personal injury actions as the District of Columbia's residual statute of limitations. *Rivers v. Montgomery*, 842 F. Supp. 1 (D.D.C. 1993).

ERISA claims. — The applicable limitations period for a claim under Employee Retirement Income Security Act is three years, as provided for by paragraph (7). *Estate of Grant v. United States News & World Report, Inc.*, 639 F. Supp. 342 (D.D.C. 1986).

FIRREA claims. — Federal law of tolling and accrual applied to interpret the statute of limitations provided by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, where that statute provided the applicable statute of limitations, unless local law provided a longer statute of limitations, and the limitation period under paragraph (8) was the same as the period provided under the federal statute. *Resolution Trust Corp. v. Gardner*, 798 F. Supp. 790 (D.D.C. 1992).

Confirmation of arbitration awards. — Since the D.C. Arbitration Act (§ 16-4301 et seq.) does not contain an explicit statute of limitations for actions to confirm arbitration awards, the courts look to the Code's general section on limitation periods (§ 12-301 et seq.). *Consolidate Rail Corp. v. Delaware & H. Ry.*, 867 F. Supp. 25 (D.D.C. 1994).

Bankruptcy proceedings. — In bankruptcy proceeding, the statute of limitations was not suspended under this section or § 12-304 because the automatic stay in the involuntary case did not preclude debtor from pursuing claims against another party. *Rothenberg v.*

Ralph D. Kaiser Co., 173 Bankr. 4 (Bankr. D.D.C. 1994).

Failure of defendant to deny U.S. citizenship deprived plaintiff of opportunity of remedying the procedural flaw before running of the statute of limitations and tolled the statute. *Wymer v. Lessin*, 625 F. Supp. 1286 (D.D.C. 1985).

Non-Title VII claims of employment discrimination governed by paragraph (8). — In an employment discrimination action involving both claims under Title VII of the Civil Rights Act of 1964 and non-Title VII claims, the District Court committed reversible error in dismissing appellant's non-Title VII claims for failure to file suit within the 90-day time limit prescribed by Title VII since those claims were subject to the 3-year statute of limitations under paragraph (8) of this section. *Gordon v. National Youth Work Alliance*, 675 F.2d 356 (D.C. Cir. 1982).

Suit filed to preserve claims for subsequent Title VII action. — The 1-year statute of limitations was tolled for the purposes of an assault and battery action when the plaintiff filed suit in the Superior Court of the District of Columbia alleging assault, battery, outrage and intentional infliction of emotional distress, where the plaintiff had filed her claims in the Superior Court to ensure that her causes of action would not expire before she could attach them to her Title VII case under the doctrine of pendent jurisdiction. *Stewart v. Thomas*, 538 F. Supp. 891 (D.D.C. 1982).

Tenant's counterclaim under Superior Court Landlord and Tenant Rule 5(b) against landlord's action to recover possession is governed by the 3-year statute of limitations of this section. *Hines v. John B. Sharkey Co.*, App. D.C., 449 A.2d 1092 (1982).

Toxic substances. — Paragraph (10) of this section neither attempts to define all toxic substances, nor excludes petroleum derivatives from its ambit. *Minkoff v. Clark Transf., Inc.*, 841 F. Supp. 424 (D.D.C. 1993).

Landowner was put on notice of noncompliance by tenant with legal regulations when landowner received notification from the D.C. Fire Department of a hazardous condition relating to tanks on the property. Landowner then knew of or should have discovered the injury. *Minkoff v. Clark Transf., Inc.*, 841 F. Supp. 424 (D.D.C. 1993).

Where plaintiff claimed damages for "sexual extortion," such a claim, if actionable at all, does not sound primarily in negligence and trial court did not err in applying the one-year statute of limitations for assault and defamation. *Bouchet v. National Urban League, Inc.*, 730 F.2d 799 (D.C. Cir. 1984).

Intentional infliction of emotional distress. — What statute of limitations applies to an action for intentional infliction of emotional

distress depends upon acts underlying the alleged infliction of emotional distress. *de la Croix de Lafayette v. de la Croix de Lafayette*, 117 WLR 2133 (Super. Ct. 1989).

Where the underlying tort of plaintiff's claim for intentional infliction of emotional distress was an assault and battery, the applicable limitation period was one year as provided in subdivision (4). *de la Croix de Lafayette v. de la Croix de Lafayette*, 117 WLR 2133 (Super. Ct. 1989).

An independent action for intentional infliction of emotional distress, not intertwined with any of the causes of action for which a period of limitation is specifically provided in the other provisions of this section, is governed by the general residuary three-year limitation of paragraph (8) of this section. *Saunders v. Nemati*, App. D.C., 580 A.2d 660 (1990).

One-year limitation period applied to intentional infliction of emotional distress claim arising out of alleged publication of defamatory and false material. *Foretich v. Glamour*, 741 F. Supp. 247 (D.D.C. 1990).

One-year statute of limitations applies to plaintiff's claim that police officers intentionally caused him emotional distress, where claim was not independent of assault and battery. *Hunter v. District of Columbia*, 943 F.2d 69 (D.C. Cir. 1991).

The applicable statute of limitations for intentional infliction of emotional distress depends on the statute of limitations applied to the underlying common law claims. Thus, where the statute of limitations for the underlying landlord-tenant and fraud claims is three years. Therefore, a three-year statute of limitations applies to plaintiff's claim for intentional infliction of emotional distress. *Hawkins v. Greenfield*, 797 F. Supp. 30 (D.D.C. 1992).

Because the statute of limitations for negligence claims is three years, plaintiff's negligent infliction of emotional distress claim is subject to a three-year limitations period either directly or as a derivative of the underlying claims. *Hawkins v. Greenfield*, 797 F. Supp. 30 (D.D.C. 1992).

Three-year limitation may apply to emotional distress claim. — A 3-year limitation applies to an emotional distress claim where it is intertwined with claims which fall within the 3-year limitation and not the 1-year limitation in subsection (4). *Burda v. National Ass'n of Postal Supvrs.*, 592 F. Supp. 273 (D.D.C. 1984), *aff'd*, 771 F.2d 1555 (D.C. Cir. 1985).

Invasion of privacy actions. — This section establishes a one-year statute of limitations for libel, slander, assault and other similar intentional torts, and this one-year statute of limitations is also applicable to invasion of privacy actions, which are essentially defamation type actions. *Doe v. Southeastern Univ.*,

732 F. Supp. 7 (D.D.C. 1990), appeal dismissed, 927 F.2d 1256 (D.C. Cir. 1991).

Asbestos-related injury. — The legislative history demonstrates that the intent behind enactment was to expand the period of time in which plaintiffs could sue to recover for asbestos-related injury or illness. And both that legislative history and the plain meaning of § 12-311(b) demonstrate just as clearly that § 12-311(a) was directed only at employees who are disabled from work because of exposure to asbestos, and not to the broader, general population of potential victims of such illness or injury. Defendants' reading which would give nonemployee victims of an asbestos illness or injury less time within which to sue than they previously had under this section would contravene the intent of the legislature and the plain meaning of § 12-311(b), and must be rejected. *Gwyer v. Celotex Corp.*, 117 WLR 2617 (Super. Ct. 1989).

Pendency of criminal proceedings tolls statute for forfeiture. — As to forfeiture, the statute is tolled during the time period between seizure of the property and judgment in the underlying criminal prosecution. *Ward v. District of Columbia*, App. D.C., 494 A.2d 666 (1985).

Voluntary dismissal does not toll section. — This section is not tolled by a pending action which is voluntarily dismissed without prejudice. *York & York Constr. Co. v. Alexander*, App. D.C., 296 A.2d 710 (1972).

The pendency of an action involuntarily dismissed without prejudice does not operate to toll the running of the statute of limitations under this section. *Dupree v. Jefferson*, 666 F.2d 606 (D.C. Cir. 1981).

Concealment or silence by a drawee is insufficient to toll 3-year statute of limitations under this section absent some trick to prevent payee's discovery by ordinary diligence of a right of action for the alleged negligent cashing of a check and delivering the proceeds to an unauthorized person. *Adrian v. American Sec. & Trust Co.*, App. D.C., 211 A.2d 771 (1965).

Claims under Rehabilitation Act of 1973. — The three-year personal injury statute of limitations under subsection (8) applies to claims brought under the Rehabilitation Act of 1973, § 504 as amended, 29 U.S.C. § 794. *Doe v. Southeastern Univ.*, 732 F. Supp. 7 (D.D.C. 1990), appeal dismissed, 927 F.2d 1256 (D.C. Cir. 1991).

Claims under the Uniform Reciprocal Support Enforcement Act. — Section 16-2342 does not apply to Uniform Reciprocal Enforcement Of Support Act (URESA) actions, and since no limitation is prescribed by URESA itself, such actions are governed by D.C. Code § 12-301(8) and must be filed within three

years of accrual. *Davis v. Davis*, 123 WLR 333 (Super. Ct. 1995).

The statute of limitations in a URESA action was not tolled during the minority of the child because the right to bring this action accrued to the parent and not the child. *Davis v. Davis*, 123 WLR 333 (Super. Ct. 1995).

Action filed by the State of Connecticut pursuant to the Uniform Reciprocal Support Enforcement Act for reimbursement of funds paid on behalf of two minor children was subject to the 3-year statute of limitations of paragraph (8), and as applied to the State of Connecticut, the 3-year time limitation was not tolled during the minority of the two minor children by § 12-302(a)(1). *D.C. v. P.L.*, 118 WLR 1729 (Super. Ct. 1990).

Action by discharged employee under Human Rights Act. — Discharged employee's action under Human Rights Act did not accrue until Court of Appeals dismissed without prejudice employee's petition for review. *Simpson v. District of Columbia Office of Human Rights*, App. D.C., 597 A.2d 392 (1992).

Limitations period for contaminated blood transfusion transmitting AIDS virus. — Limitations period for personal injury suit based on victim's contraction of acquired immunodeficiency syndrome (AIDS) virus from contaminated blood transfusion commenced no later than the date the victim learned of the pathogenic transfusion and that he tested positive for the human immunodeficiency virus (HIV) antibody. *Nelson v. American Nat'l Red Cross*, 815 F. Supp. 501 (D.D.C. 1993), modified on other grounds, 26 F.3d 193 (D.C. Cir. 1994).

Pending workers' compensation claim did not toll limitations period. — Where defendant was not plaintiff's employer but rather a third party with regard to a workers' compensation claim, the statute of limitations on plaintiff's personal injury suit against defendant was not tolled because of the pending workers' compensation claim. *Simpson v. Jack Baker, Inc.*, App. D.C., 620 A.2d 254 (1993).

Survival of actions. — The District's Survival Act (§ 12-101) is subject to a three-year statute of limitations. *Jing W. Huang v. D'Albora*, App. D.C., 644 A.2d 1 (1994).

Pending personal injury action under the Survival Act does not toll this section on a death claim. *Wharton v. Jones*, 285 F. Supp. 634 (D.D.C. 1968).

Nor does a wrongful death action toll this section on a claim under the Survival Act. *Wharton v. Jones*, 285 F. Supp. 634 (D.D.C. 1968).

Publication of article does not toll statute on securities fraud claim. — As a matter of law, a single business journal article challenging the accounting procedures of a reputable firm is insufficient to impute knowledge of fraud to buyers of the securities issued by a

client of that accounting firm, and thus publication of the article does not begin to toll the statute of limitations on a securities fraud claim. *Wachovia Bank & Trust Co. v. National Student Mktg. Corp.*, 650 F.2d 342 (D.C. Cir. 1980), cert. denied, 452 U.S. 954, 101 S. Ct. 3099, 69 L. Ed. 2d 965 (1981).

Negligence action timely filed. — A shooting victim who files his complaint within the limitation period for negligence actions has filed timely, notwithstanding the contention that the complaint was essentially one for "wounding" for which it would be barred under the 1-year limitation period under paragraph (4). *Marusa v. District of Columbia*, 484 F.2d 828 (D.C. Cir. 1973).

Amendment relating back to original complaint. — Plaintiff journalist's claims in an amended complaint alleging nonpayment for "news spots" furnished defendant broadcasting company related back to the original complaint and were not time-barred, where the later broadcasts occurred close in time to the broadcasts identified in the original complaint, and the breach of contract claims concerning those broadcasts involved failure to credit claims identical to those asserted concerning the earlier identified broadcasts. *Peckarsky v. ABC*, 603 F. Supp. 688 (D.D.C. 1984).

Amendment not relating back to original. — Amended complaint filed after the expiration of the statute of limitations period did not relate back to the time of the original filing where party had no notice of the original filing of the complaint. *Wood v. Barwood Cab Co.*, App. D.C., 648 A.2d 670 (1994).

Suit untimely. — A suit against a drug manufacturer based on theories of negligence, breach of warranty and products liability is barred by the 3-year limitations period when 6 years earlier, plaintiff knew, or through exercise of due diligence, should have known that she had a claim. *Grigsby v. Sterling Drug, Inc.*, 428 F. Supp. 242 (D.D.C. 1975), aff'd, 543 F.2d 417 (D.C. Cir. 1976), cert. denied, 431 U.S. 967, 97 S. Ct. 2925, 53 L. Ed. 2d 1063 (1977).

With respect to implied or constructive trusts, unless there has been a fraudulent concealment of the cause of action an unreasonable lapse of time is a complete bar in equity, as at law, and where a plaintiff waited 6 years to bring an action seeking imposition of a constructive trust the unreasonable delay defeated his action. *Watwood v. Yambrusic*, App. D.C., 389 A.2d 1362 (1978).

Plaintiffs' common law libel claim, and the assault claims were barred by the District of Columbia statute of limitations which explicitly provides only one year in which to file actions for these and other torts of this nature, including plaintiffs' claim for intentional infliction of emotional distress. *Thomas v. News World*

Communications, 681 F. Supp. 55 (D.D.C. 1988).

Plaintiff's causes of action for conversion, violation of the U.C.C., breach of contract, and wrongful transfer were barred by the statute of limitations. *Riddell v. Riddell Wash. Corp.*, 680 F. Supp. 4 (D.D.C. 1987), modified on other grounds, 866 F.2d 1480 (D.C. Cir. 1989).

Cited in *Lew v. Suffridge*, 370 F.2d 487 (D.C. Cir. 1966); *Dawson v. Drazin*, App. D.C., 223 A.2d 375 (1966); *Fort Myers Seafood Packers, Inc. v. Steptoe & Johnson*, 381 F.2d 261 (D.C. Cir. 1967), cert. denied, 390 U.S. 946, 88 S. Ct. 1033, 19 L. Ed. 2d 1135 (1968); *Zlotnick v. Jack I. Benders & Sons*, 285 F. Supp. 548 (D.D.C. 1968), aff'd as modified, 422 F.2d 716 (D.C. Cir. 1970); *Gary v. Dane*, 411 F.2d 711 (D.C. Cir. 1969); *Property 10-F, Inc. v. Pack & Process, Inc.*, App. D.C., 265 A.2d 290 (1970); *Montague v. Kunzig*, 442 F.2d 1230 (D.C. Cir. 1971); *Fox-Greenwald Sheet Metal Co. v. Markowitz Bros.*, 452 F.2d 1346 (D.C. Cir. 1971); *Akinyode v. Hawkins*, App. D.C., 292 A.2d 795 (1972); *Dillard v. Travelers Ins. Co.*, App. D.C., 298 A.2d 222 (1972); *Farrier v. May Dep't Stores Co.*, 357 F. Supp. 190 (D.D.C. 1973); *American Sec. & Trust Co. v. Bindeman*, App. D.C., 303 A.2d 188 (1973); *Tolson v. Handley Ford, Inc.*, App. D.C., 304 A.2d 634 (1973); *May Dep't Stores Co. v. Devercelli*, App. D.C., 314 A.2d 190 (1973); *Clark v. Scott*, App. D.C., 329 A.2d 442 (1974); *Hartford Life Ins. Co. v. Title Guarantee Co.*, 520 F.2d 1170 (D.C. Cir. 1975); *Toomey v. Cammack*, App. D.C., 345 A.2d 453 (1975); *Brewster v. Woodward & Lothrop, Inc.*, 530 F.2d 1016 (D.C. Cir. 1976); *Johnson v. Bernard Ins. Agency, Inc.*, 532 F.2d 1382 (D.C. Cir. 1976); *Shifrin v. Wilson*, 412 F. Supp. 1282 (D.D.C. 1976); *Aetna Cas. & Sur. Co. v. Windsor*, App. D.C., 353 A.2d 684 (1976); *Mallory v. Safeway Stores, Inc.*, App. D.C., 360 A.2d 48 (1976); *Forrestal Village, Inc. v. Graham*, 551 F.2d 411 (D.C. Cir. 1977); *McCarthy v. Kleindienst*, 562 F.2d 1269 (D.C. Cir. 1977); *Manatee Cablevision Corp. v. Pierson*, 433 F. Supp. 571 (D.D.C. 1977); *Schmidt v. Interstate Fed. Sav. & Loan Ass'n*, 74 F.R.D. 423 (D.D.C. 1977); *Knight v. Cheek*, App. D.C., 369 A.2d 601 (1977); *Strother v. District of Columbia*, App. D.C., 372 A.2d 1291 (1977); *Saffron v. Wilson*, 481 F. Supp. 228 (D.D.C. 1979); *Pitts v. District of Columbia*, App. D.C., 391 A.2d 803 (1979); *Martin v. Carter*, App. D.C., 400 A.2d 326 (1979); *American Univ. Park Citizens Ass'n v. Burka*, App. D.C., 400 A.2d 737 (1979); *Breen v. District of Columbia*, App. D.C., 400 A.2d 1058 (1979); *Eagle Wine & Liquor Co. v. Silverberg Elec. Co.*, App. D.C., 402 A.2d 31 (1979); *Hall v. Cafritz*, App. D.C., 402 A.2d 828 (1979); *McShain, Inc. v. L'Enfant Plaza Properties, Inc.*, App. D.C., 402 A.2d 1222 (1979); *Habib v. Raytheon Co.*, 616 F.2d 1204 (D.C. Cir. 1980); *Peak v. United States*, App. D.C., 419 A.2d 1006

(1980); *Biddle v. Chatel*, App. D.C., 421 A.2d 3 (1980); *Lawrence v. Acree*, 665 F.2d 1319 (D.C. Cir. 1981); *Higgins v. Washington Metropolitan Area Transit Auth.*, 507 F. Supp. 984 (D.D.C. 1981); *Aleotti v. Whitaker Bros. Bus. Machs.*, App. D.C., 427 A.2d 919 (1981); *Gordon v. National Youth Work Alliance*, 675 F.2d 356 (D.C. Cir. 1982); *Leachman v. Beech Aircraft Corp.*, 694 F.2d 1301 (D.C. Cir. 1982); *Park v. Didden*, 695 F.2d 626 (D.C. Cir. 1982); *Corley v. Hecht Co.*, 530 F. Supp. 1155 (D.D.C. 1982); *Sere v. Group Hospitalization, Inc.*, App. D.C., 443 A.2d 33, cert. denied, 459 U.S. 912, 103 S. Ct. 221, 74 L. Ed. 2d 176 (1982); *Davis v. Potomac Elec. Power Co.*, App. D.C., 449 A.2d 278 (1982); *District-Realty Title Ins. Corp. v. Dailey*, 110 WLR 2693 (Super. Ct. 1982); *Richards v. Mileski*, 567 F. Supp. 1391 (D.D.C. 1983); *Sturdivant v. Seaboard Serv. Sys.*, App. D.C., 459 A.2d 1058 (1983); *Dodson v. Washington Automotive Co.*, App. D.C., 461 A.2d 1020 (1983); *Chaconas v. Meyers*, App. D.C., 465 A.2d 379 (1983); *Gilson v. Republic of Ir.*, 606 F. Supp. 38 (D.D.C. 1984), aff'd, 787 F.2d 655 (D.C. Cir. 1986); *Turner v. Taylor*, App. D.C., 471 A.2d 1010 (1984); *Phenix-Georgetown, Inc. v. Chas. H. Tompkins Co.*, App. D.C., 477 A.2d 215 (1984); *Provisional Gov't of Republic of New Afr. v. ABC*, 609 F. Supp. 104 (D.D.C. 1985); *Bartel v. FAA*, 617 F. Supp. 190 (D.D.C. 1985); *Childress v. Northrop Corp.*, 618 F. Supp. 44 (D.D.C. 1985), aff'd, 784 F.2d 1131 (1986); *Parker v. National Corp. for Hous. Partnerships*, 619 F. Supp. 1061 (D.D.C. 1985); *Pender v. National R.R. Passenger Corp.*, 625 F. Supp. 252 (D.D.C. 1985); *Durham v. District of Columbia*, App. D.C., 494 A.2d 1346 (1985); *Strand v. Frenkel*, App. D.C., 500 A.2d 1368 (1985); *Foltz v. United States News & World Report, Inc.*, 627 F. Supp. 1143 (D.D.C. 1986); *Brown v. District of Columbia*, 638 F. Supp. 1479 (D.D.C. 1986); *Richardson v. United States News & World Report, Inc.*, 639 F. Supp. 595 (D.D.C. 1986); *John Doe v. Yogi*, 652 F. Supp. 203 (D.D.C. 1986), modified, *Kropinski v. World Plan Executive Council*, 853 F.2d 948 (D.C. Cir. 1988); *Dayton v. Czechoslovak Socialist Republic*, 672 F. Supp. 7 (D.D.C. 1986), aff'd, 834 F.2d 203 (D.C. Cir. 1987), cert. denied, 486 U.S. 1054, 108 S. Ct. 2820, 100 L. Ed. 2d 921 (1988); *Local 26, Int'l Bd. of Elec. Workers v. CWS Elec.*, 699 F. Supp. 495 (D.D.C. 1986); *Federal Express Servs. Corp. v. American Fed'n of Community Credit Unions, Inc.*, 114 WLR 873 (Super. Ct. 1986); *Thomas v. Group Health*

Ass'n, 114 WLR 1493 (Super. Ct. 1986); *Spann v. Colonial Village, Inc.*, 662 F. Supp. 541 (D.D.C. 1987); *National R.R. Passenger Corp. v. Notter*, 677 F. Supp. 1 (D.D.C. 1987); *Interdonato v. Interdonato*, App. D.C., 521 A.2d 1124 (1987); *Clark v. Clark*, App. D.C., 535 A.2d 872 (1987); *Berger v. Iron Workers Reinforced Rodmen Local 201*, 843 F.2d 1395 (D.C. Cir. 1988), modified on other grounds, 852 F.2d 619 (1988), cert. denied, 490 U.S. 1105, 109 S. Ct. 3155, 104 L. Ed. 2d 1018 (1989); *Beatty v. Washington Metro. Area Transit Auth.*, 860 F.2d 1117 (D.C. Cir. 1988); *Committee of Blind Vendors v. District of Columbia*, 695 F. Supp. 1234 (D.D.C. 1988); *Crocker v. Piedmont Aviation, Inc.*, 696 F. Supp. 685 (D.D.C. 1988); *Filloramo v. Johnston, Lemon & Co.*, 697 F. Supp. 517 (D.D.C. 1988); *Monroe v. Williams*, 705 F. Supp. 621 (D.D.C. 1988); *Press v. Howard Univ.*, App. D.C., 540 A.2d 733 (1988); *Bledsoe v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 544 A.2d 723 (1988); *Kyriakopoulos v. George Wash. Univ.*, 866 F.2d 439 (D.C. Cir. 1989); *Riddell v. Riddell Wash. Corp.*, 866 F.2d 1480 (D.C. Cir. 1989); *Wesley Theological Sem. v. United States Gypsum Co.*, 876 F.2d 119 (D.C. Cir. 1989); *Abramson v. Wallace*, 706 F. Supp. 1 (D.D.C. 1989); *Pyramid Sec. Ltd. v. International Bank*, 726 F. Supp. 1377 (D.D.C. 1989), aff'd, 924 F.2d 1114, (D.C. Cir.), cert. denied, — U.S. —, 112 S. Ct. 85, 116 L. Ed. 2d 57 (1991); *Deskins v. Barry*, 729 F. Supp. 1 (D.D.C. 1989); *Stackhouse v. Schneider*, App. D.C., 559 A.2d 306 (1989); *Professional Answering Serv., Inc. v. C & P Tel. Co.*, App. D.C., 565 A.2d 55 (1989); *Patterson v. District of Columbia*, 117 WLR 741 (Super. Ct. 1989); *Benikas v. Custom Print, Inc.*, 117 WLR 2389 (Super. Ct. 1989); *Williams v. Mordkofsky*, 901 F.2d 158 (D.C. Cir. 1990); *Weiss v. International Bhd. of Elec. Workers*, 729 F. Supp. 144 (D.D.C. 1990); *Adams v. Virginia Cable Specialties, Inc.*, 733 F. Supp. 132 (D.D.C. 1990); *Cannon v. District of Columbia*, App. D.C., 569 A.2d 595 (1990); *Jameson v. King*, App. D.C., 571 A.2d 216 (1990); *Estate of Wells v. Estate of Smith*, App. D.C., 576 A.2d 707 (1990); *In re Lenoir*, App. D.C., 585 A.2d 771 (1991); *Holland v. Board of Trustees*, 794 F. Supp. 420 (D.D.C. 1992); *Pritchett v. Stillwell*, App. D.C., 604 A.2d 886 (1992); *Anderson v. Jones*, App. D.C., 606 A.2d 185 (1992); *In re T.M.*, 120 WLR 2541 (Super. Ct. 1992); *Cameron v. Washington Metro. Area Transit Auth.*, App. D.C., 649 A.2d 291 (1994).

§ 12-302. Disability of plaintiff.

(a) Except as provided by subsection (b) of this section, when a person entitled to maintain an action is, at the time the right of action accrues:

(1) under 18 years of age; or

- (2) noncompos mentis; or
- (3) imprisoned —

he or his proper representative may bring action within the time limited after the disability is removed.

(b) When a person entitled to maintain an action for the recovery of lands, tenements, or hereditaments, or upon an instrument under seal, is under any of the disabilities specified by subsection (a) of this section at the time the right of action accrues, he or his proper representative, except where otherwise specified herein, may bring the action within 5 years after the disability is removed, and not thereafter. (Dec. 23, 1963, 77 Stat. 510, Pub. L. 88-241, § 1; 1973 Ed., § 12-302; Mar. 16, 1978, D.C. Law 2-61, § 2, 24 DCR 6011.)

Section references. — This section is referred to in § 12-308.

Legislative history of Law 2-61. — Law 2-61, the "An Amendment to the District of Columbia Age of Majority Act," was introduced in Council and assigned Bill No. 2-165, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on September 13, 1977 and October 11, 1977, respectively. Signed by the Mayor on January 11, 1978, it was assigned Act No. 2-131 and transmitted to both Houses of Congress for its review.

Limitation period for a minor's cause of action for medical malpractice does not begin to run until he has attained his majority. *Canterbury v. Spence*, 464 F.2d 772 (D.C. Cir.), cert. denied, 409 U.S. 1064, 93 S. Ct. 560, 34 L. Ed. 2d 518 (1972).

Preventing litigation of stale claims is subordinate to protecting minors. — This section embodies a legislative judgment that the government's legitimate interest in preventing litigation of stale claims is not so important that it cannot be subordinated to the policy of shielding minors from the consequences of their inability to protect their own interests. *District of Columbia ex rel. W.J.D. v. E.M.*, App. D.C., 467 A.2d 457 (1983).

Release from prison commences running of section. — Defendant's release from prison commenced the running of this section where the alleged injury occurred on the date of his imprisonment. *Hunt v. Bittman*, 482 F. Supp. 1017 (D.D.C.), aff'd, 652 F.2d 196 (D.C. Cir. 1980), cert. denied, 454 U.S. 860, 102 S. Ct. 315, 70 L. Ed. 2d 158 (1981).

Landlords are not immunized from period of prescriptive use running against them while they are not in actual possession of the property. *Aleotti v. Whitaker Bros. Bus. Machs.*, App. D.C., 427 A.2d 919 (1981).

Subsection (a)(3) is applicable to an action brought by a prisoner at the Lorton Reformatory under 42 U.S.C. § 1983 and tolls the applicable statute of limitations. *LaGon v. Barry*, 658 F. Supp. 55 (D.D.C. 1987).

Running of statute of limitations was tolled by appellant's imprisonment, which commenced at the time the cause of action accrued and continued at least until appellant filed his complaint. *McClam v. Barry*, 697 F.2d 366 (D.C. Cir. 1983), overruled on other grounds, 742 F.2d 1498 (1984).

Because the statute of limitations governing plaintiff's claim for legal malpractice was tolled pursuant to paragraph (a)(3) due to his imprisonment at the time his cause of action accrued, trial court erred in dismissing his claim. *Brown v. Jonz*, App. D.C., 572 A.2d 455 (1990).

Subsection (a)(3) of this section has been interpreted to require tolling of the statute of limitations in prisoners' § 1983 actions until release from prison. *Murray v. District of Columbia*, 826 F. Supp. 4 (D.D.C. 1993).

Statute of limitations not tolled by parole. — In order for the complaining party to toll running of statute of limitations on the ground of disability by reason of imprisonment, such party must be in prison, not merely on parole. *Cannon v. District of Columbia*, App. D.C., 569 A.2d 595 (1990).

Action for child support. — A child's right to maintain an action for child support is available to him or her throughout her minority, and the applicable limitation period does not begin to run until the child reaches the age of majority; additionally, absent a specific statutory limitation period the general three-year period will apply. *Davis v. Davis*, 121 WLR 1721 (Super. Ct. 1993).

Cause of action for improper performance of sterilization arose when plaintiff learned she had conceived. — Medical malpractice cause of action for failure to properly perform a sterilization procedure was complete when plaintiff knew that she had conceived, notwithstanding the sterilization procedure, and was barred by 3-year statute of limitations. *Stewart v. Bepko*, 576 F. Supp. 182 (D.D.C. 1983), aff'd, 735 F.2d 617 (D.C. Cir. 1984).

Cited in *Gwinn v. District of Columbia*, App. D.C., 434 A.2d 1376 (1981); *Group Health Ass'n v. Gatlin*, App. D.C., 463 A.2d 700 (1983); *John*

Doe v. Yogi, 652 F. Supp. 203 (D.D.C. 1986), modified, *Kropinski v. World Plan Executive Council*, 853 F.2d 948 (D.C. Cir. 1988); *Speiser v. United States Dep't of Health & Human Serv.*, 670 F. Supp. 380 (D.D.C. 1986), *aff'd*, 818 F.2d 95 (D.C. Cir. 1987); *Interdonato v.*

Interdonato, App. D.C., 521 A.2d 1124 (1987); *Foretich v. Glamour*, 741 F. Supp. 247 (D.D.C. 1990); *Kien v. United States*, 749 F. Supp. 286 (D.D.C. 1990); *Spencer v. Williams*, App. D.C., 569 A.2d 1194 (1990); *Coleman v. Group Health Ass'n*, 118 WLR 2289 (Super. Ct. 1990).

§ 12-303. Absence or concealment of defendant.

(a) When a person who is a resident of the District of Columbia is out of the District or has absconded or concealed himself at the time a cause of action accrues against him, the period limited for the bringing of the action does not begin to run until he comes into the District or while he is so absconded or concealed.

(b) When such a person absconds or conceals himself after the cause of action accrues, the time of his absence or concealment may not be computed as a part of the period within which the action must be brought. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1; 1973 Ed., § 12-303.)

Section raises question of fact. — Absence or concealment of defendant under this section is a question of fact not susceptible to a

motion for judgment on the pleadings or a motion to dismiss. *Huntsman v. Park*, 112 WLR 657 (Super. Ct. 1984).

§ 12-304. Actions stayed by court or statute.

When the bringing of an action is stayed by an injunction or other order of a court of justice, or by statutory prohibition, the time of the stay may not be computed as a part of the period within which the action must be brought. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1; 1973 Ed., § 12-304.)

Bankruptcy proceedings. — In bankruptcy proceeding, the statute of limitations was not suspended under this section or § 12-301 because the automatic stay in the involun-

tary case did not preclude debtor from pursuing claims against another party. *Rothenberg v. Ralph D. Kaiser Co.*, 173 Bankr. 4 (Bankr. D.D.C. 1994).

§ 12-305. Actions against decedents' estates.

In an action against the estate of a deceased person, the interval, not exceeding two years, between the death of the deceased and 6 months after the date of the first publication of notice of the appointment of a personal representative under section 20-704 may not be computed as a part of the period within which the action must be brought. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1; 1973 Ed., § 12-305; June 24, 1980, D.C. Law 3-72, § 202(a), 27 DCR 2155.)

Section references. — This section is referred to in § 12-308.

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to

the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980 and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

§ 12-306. Directions as to debts in a will.

Repealed. June 24, 1980, D.C. Law 3-72, § 202(b), 27 DCR 2155.

Legislative history of Law 3-72. — See note to § 12-305.

§ 12-307. Foreign judgments.

An action upon a judgment or decree rendered in a State, territory, commonwealth or possession of the United States or in a foreign country is barred if by the laws of that jurisdiction, the action would there be barred and the judgment or decree would be incapable of being otherwise enforced there. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1; 1973 Ed., § 12-307.)

Section references. — This section is referred to in § 12-308.

Statute of limitations not tolled. — The 3-year statute of limitations is not tolled by the

filing of a suit against the clients by an out of state attorney to recover a fee. *Brown v. Lamb*, 414 F.2d 1210 (D.C. Cir. 1969), cert. denied, 397 U.S. 907, 90 S. Ct. 904, 25 L. Ed. 2d 88 (1970).

§ 12-308. Actions by the United States.

Sections 12-301, 12-302, 12-305, and 12-307 do not apply to an action in which the United States is the real and not merely the nominal plaintiff. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1; 1973 Ed., § 12-308.)

Cited in *Peckarsky v. ABC*, 603 F. Supp. 688 (D.D.C. 1984).

§ 12-309. Actions against District of Columbia for unliquidated damages; time for notice.

An action may not be maintained against the District of Columbia for unliquidated damages to person or property unless, within six months after the injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the Mayor of the District of Columbia of the approximate time, place, cause, and circumstances of the injury or damage. A report in writing by the Metropolitan Police Department, in regular course of duty, is a sufficient notice under this section. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 551, Pub. L. 91-358, title I, § 141(2); 1973 Ed., § 12-309; Apr. 30, 1988, D.C. Law 7-104, § 2(b), 35 DCR 147.)

Cross references. — As to claims against District, see §§ 1-1201 to 1-1206.

As to liability of District employees, see §§ 1-1211 to 1-1216.

Section references. — This section is referred to in §§ 1-1213 and 1-1224.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and

December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Applicability. — According to the plain meaning of the language of this section, it applies only to actions sounding in tort. *District of Columbia v. Campbell*, App. D.C., 580 A.2d 1295 (1990).

This section is purely a notice provision specifically designed to avoid, as applied to the District, the pitfalls of the statute of limita-

tions. *Gwinn v. District of Columbia*, App. D.C., 434 A.2d 1376 (1981).

Disparate treatment of tort-feasors justified. — Differences existing between governmental and private tort-feasors justifies the disparate treatment accorded private tort-feasors and those injured by governmental tort-feasors under this section. *Wilson v. District of Columbia*, App. D.C., 338 A.2d 437 (1975).

Section strictly construed. — Since this section is in derogation of the common law, it must be strictly construed. *Pitts v. District of Columbia*, App. D.C., 391 A.2d 803 (1978); *Washington v. District of Columbia*, App. D.C., 429 A.2d 1362 (1981); *Gwinn v. District of Columbia*, App. D.C., 434 A.2d 1376 (1981); *Jones v. Palmer*, 113 WLR 2633 (Super. Ct. 1985).

The requirements of this section are to be strictly construed. *Braxton v. National Capital Hous. Auth.*, App. D.C., 396 A.2d 215 (1978).

Intent of section. — This section was intended to ensure that District officials would be given reasonable notice of an accident so that the facts may be ascertained and, if possible, the claim adjusted. *Shehyn v. District of Columbia*, App. D.C., 392 A.2d 1008 (1978).

This section was intended to serve the same function as numerous comparable state statutes requiring notice to municipalities of events which might result in traditional tort suits against them. *Lively v. Cullinane*, 451 F. Supp. 999 (D.D.C. 1976).

The notice requirement was intended by Congress to ensure that District officials would be given prompt notice of claims for potentially large sums of money so that they could quickly investigate before evidence became lost or witnesses unavailable, correct hazardous or potentially hazardous conditions, and settle meritorious claims. *Gwinn v. District of Columbia*, App. D.C., 434 A.2d 1376 (1981).

Purpose of section is to give the District's officials reasonable notice of an accident so that facts may be ascertained and, if possible, the claim adjusted. *Boone v. District of Columbia*, 294 F. Supp. 1156 (D.D.C. 1968).

The purpose of this section is not to help the District to evaluate known claims by requiring notice complete enough to state a formal cause of action. Rather, it is intended solely to assure the District the opportunity for timely access to all relevant facts about a potential claim, in order to protect the District against an unfair advantage by the eventual claimant. *Washington v. District of Columbia*, App. D.C., 429 A.2d 1362 (1981).

Purposes of this section are to put the government on notice to preserve all of its records, and to enable prompt investigation prior to the loss or destruction of evidence; a fair inference is that this section also serves to facilitate the preservation of evidence uncovered through

such prompt investigation. *Williams v. District of Columbia*, 116 WLR 41 (Super. Ct. 1988).

Generally stated, the purposes of this section are: (1) to allow the District to investigate potential claims so that evidence may be gathered while still available; (2) to enable the District to correct defective conditions, thus increasing public safety; and (3) to facilitate settlement of meritorious claims and resist frivolous ones. *Hardy v. District of Columbia*, App. D.C., 616 A.2d 338 (1992).

Section gives District a litigative advantage over an ordinary civil defendant who may learn of claims against him for unliquidated damages at any time within the statute of limitations period. *Pitts v. District of Columbia*, App. D.C., 391 A.2d 803 (1978); *Gwinn v. District of Columbia*, App. D.C., 434 A.2d 1376 (1981).

This section does not apply to actions against University of District of Columbia's Board of Trustees. *Downs v. Board of Trustees*, 112 WLR 493 (Super. Ct. 1984).

Section applies to intentional torts. *Breen v. District of Columbia*, App. D.C., 400 A.2d 1058 (1979).

And where District answerable under respondeat superior. — The requirements of this section must be met where a claim arises out of tortious conduct of employees of the District to which the District, as the superior, must respond. *Shehyn v. District of Columbia*, App. D.C., 392 A.2d 1008 (1978).

Section applies to constitutional cause of action. — This section is applicable to actions brought in federal court for deprivations of constitutional rights. *Osgood v. District of Columbia*, 567 F. Supp. 1026 (D.D.C. 1983).

Section inapplicable where constitutional violation alleged in federal forum. — This section did not apply to an action in which the plaintiff alleged infringement of constitutional rights and sought redress under federal law and in a federal forum under federal question jurisdiction. *Lively v. Cullinane*, 451 F. Supp. 999 (D.D.C. 1976).

Federal claims against the District. — Noncompliance with the notice requirements of this section cannot bar federal claims against the District, whether those claims are brought under 42 U.S.C. § 1983, as in the instant case, or in a Bivens-type action. *Powell v. District of Columbia*, 645 F. Supp. 66 (D.D.C. 1986).

As an eighth amendment claim brought under 42 U.S.C. § 1983, plaintiff's complaint was not subject to the notice provisions of this section. *Johnson-El v. District of Columbia*, App. D.C., 579 A.2d 163 (1990).

Decision of the United States Court of Appeals concerning this section's notice provision is the law of the case as long as the appellate court has jurisdiction to review decisions of the District of Columbia Court of

Appeals. District of Columbia v. Smith, App. D.C., 297 A.2d 787 (1972).

Noncompliance with notice provision cannot bar constitutional tort claim against District. — Plaintiff's noncompliance with 6-month notice of claims provision cannot bar a federal cause of action, such as a constitutional tort claim, against the District of Columbia; panel opinion in McClam v. Barry, 697 F.2d 366 (D.C. Cir. 1983) is overruled. Brown v. United States, 742 F.2d 1498 (D.C. Cir. 1984), cert. denied, 471 U.S. 1073, 105 S. Ct. 2153, 85 L. Ed. 2d 509 (1985).

Compliance with notice requirement is mandatory. Pitts v. District of Columbia, App. D.C., 391 A.2d 803 (1978); Gwinn v. District of Columbia, App. D.C., 434 A.2d 1376 (1981); Hardy v. District of Columbia, App. D.C., 616 A.2d 338 (1992).

The notice requirements of this section are mandatory; if there is no timely, written notice, a plaintiff is precluded from litigating his claim. Breen v. District of Columbia, App. D.C., 400 A.2d 1058 (1979).

The time period prescribed by this section for giving written notice is mandatory. Eskridge v. Jackson, App. D.C., 401 A.2d 986 (1979).

Notice was timely and sufficient to meet the "cause" and "circumstances" requirements of this section. Allen v. District of Columbia, App. D.C., 533 A.2d 1259 (1987).

Notice under this section is condition precedent to filing a suit against the District. Gwinn v. District of Columbia, App. D.C., 434 A.2d 1376 (1981).

Adequacy of notice under this section is question of law. Washington v. District of Columbia, App. D.C., 429 A.2d 1362 (1981).

Rationale underlying the notice requirement is to (1) protect the District against unreasonable claims and (2) give reasonable notice to the District so that the facts may be ascertained and, if possible, deserving claims adjusted and meritless claims resisted. Pitts v. District of Columbia, App. D.C., 391 A.2d 803 (1978); Braxton v. National Capital Hous. Auth., App. D.C., 396 A.2d 215 (1978).

Contents of notice to receive liberal construction. — Being in derogation of the common law, this section is strictly construed; however, the notice's required contents, such as "approximate . . . place" of injury, are to be interpreted liberally. Hardy v. District of Columbia, App. D.C., 616 A.2d 338 (1992).

Notice necessary in claim for unliquidated damages. — Evidence sufficient to find that suit involved a claim for unliquidated damages and was, accordingly, not exempt from the notice requirements of this section. District of Columbia v. Campbell, App. D.C., 580 A.2d 1295 (1990).

Considerations in determining adequacy of notice. — The determination of

whether a particular police report or series of reports constitutes statutory notice to the District can only be reached after consideration of the particular facts of the case, the nature of the report itself and the objectives sought to be attained by the notice provision. Pitts v. District of Columbia, App. D.C., 391 A.2d 803 (1978); Washington v. District of Columbia, App. D.C., 429 A.2d 1362 (1981).

This section is best interpreted and administered as limiting the inquiry into compliance to the adequacy of the information furnished in the notice. Gaskins v. District of Columbia, App. D.C., 579 A.2d 719 (1990).

Elements of sufficient notice. — Notice is sufficient if it either characterizes the injury and asserts the right to recovery, or, without asserting a claim, describes the injuring event with sufficient detail to reveal, in itself, a basis for the District's potential liability. Washington v. District of Columbia, App. D.C., 429 A.2d 1362 (1981).

The circumstances described in the notice must be detailed enough for the District to conduct a prompt, properly focused investigation of the claim. Washington v. District of Columbia, App. D.C., 429 A.2d 1362 (1981).

Where the plaintiff's letter notified the District of his false arrest claim but failed to reveal the factual cause of the injury he suffered, the letter failed to characterize plaintiff's injuries or describe the injuring events. Powell v. District of Columbia, 645 F. Supp. 66 (D.D.C. 1986).

Filing of complaint insufficient notice. — The notice requirement of this section is not satisfied by a wrongful death complaint that is filed within the six-month period for giving notice. Campbell v. District of Columbia, App. D.C., 568 A.2d 1076 (1990).

The filing of a complaint does not satisfy the notice requirement of this section. District of Columbia v. Campbell, App. D.C., 580 A.2d 1295 (1990).

Precise exactness to section's requirements is not absolutely essential. Washington v. District of Columbia, App. D.C., 429 A.2d 1362 (1981).

Cause and circumstances are separate elements of this section's requirement. Washington v. District of Columbia, App. D.C., 429 A.2d 1362 (1981).

District must receive written notice within 6 months of injury. — This section requires that the District receive written notice within 6 months of the injury giving rise to the claim, not merely that notice has been mailed within 6 months. DeKine v. District of Columbia, App. D.C., 422 A.2d 981 (1980).

Notice of claim is fatally defective if one or more of the statutory elements is lacking. Boone v. District of Columbia, 294 F. Supp. 1156 (D.D.C. 1968).

Notice of a claim is fatally defective if the notice failed to apprise the District of the identity of the claimant and did not advise the District of the circumstances of injury. *Boone v. District of Columbia*, 294 F. Supp. 1156 (D.D.C. 1968).

Recovery precluded where notice insufficient. — Where property owners failed to plead or prove notice of alleged defect in District's specifications for constructing city streets and water pipes and property owners failed to give written notice under this section, they are precluded from recovering on tort theory for damages resulting from allegedly insufficient specifications for city streets and water pipes. *District of Columbia v. North Washington Neighbors, Inc.*, App. D.C., 367 A.2d 143 (1976), cert. denied, 434 U.S. 823, 98 S. Ct. 68, 54 L. Ed. 2d 80 (1977).

District may assert bar based on failure of timely notice. — District of Columbia is not estopped from asserting that a motorist's claim against it is barred due to the motorist's failure to give timely notice of claim absent waiver by the District of the notice requirement. *Miller v. Spencer*, App. D.C., 330 A.2d 250 (1974).

This section's period of notice is not tolled during litigant's minority. *Gwinn v. District of Columbia*, App. D.C., 434 A.2d 1376 (1981).

This section starts computation of time at moment injury or damage is sustained. *DeKine v. District of Columbia*, App. D.C., 422 A.2d 981 (1980).

Computation of elapsed time excludes date of injury while including the date notice is received. *DeKine v. District of Columbia*, App. D.C., 422 A.2d 981 (1980).

Lack of full awareness of seriousness of injury does not excuse failure to give notice of the fact of injury to the District. *DeKine v. District of Columbia*, App. D.C., 422 A.2d 981 (1980).

Injury from false arrest occurs at first moment of detention for purposes of computing elapsed time under this section. *DeKine v. District of Columbia*, App. D.C., 422 A.2d 981 (1980).

Time limitation for impoundment claim is measured from date of seizure rather than the date of release. *DeKine v. District of Columbia*, App. D.C., 422 A.2d 981 (1980).

Notice required where District unaware of injury from known wrongful act. — This section is applicable where the District itself is in breach of a duty but where, although necessarily aware of the breach, the District is not necessarily aware of the injury produced by the breach. *Shehyn v. District of Columbia*, App. D.C., 392 A.2d 1008 (1978).

Adequate notice by letter and verbal complaints. — In suit by lessor for breach by the District of a contractual duty under its

lease and for conversion of the lessor's property, the requirements of this section were met where the lessor in conversations with personnel of the Department of General Services complained of damage to the leased premises both before and after expiration of the lease term and the lessor's attorney sent a letter to the Assistant Director for Buildings Management, with a copy to an assistant corporation counsel, giving notice to the District to vacate the premises and stating that the lessor intended to prosecute his claims under the lease. *Shehyn v. District of Columbia*, App. D.C., 392 A.2d 1008 (1978).

Claim based on non-compliance with Housing Regulations sufficient notice. — As a claim for rent abatement and related relief based on non-compliance with the D.C. Housing Regulations is a breach of contract claim, the District's motion to dismiss for defendant's asserted failure to give timely notice of suit to the District under this section was denied. *Lee v. District of Columbia*, 122 WLR 1957 (Super. Ct. 1994).

Spouse need not specifically assert claim for loss of consortium and furnish separate notice when the injured spouse duly notifies the Mayor of his or her claim and the details of the accident pursuant to this section. *Romer v. District of Columbia*, App. D.C., 449 A.2d 1097 (1982).

Investigation by District irrelevant to "notice in writing" determination. — The fact that the District investigates the incident as a result of a letter is irrelevant to the question whether the letter itself was "notice in writing" within the meaning of this section. *Washington v. District of Columbia*, App. D.C., 429 A.2d 1362 (1981).

Complaint does not satisfy notice requirement. — The purpose behind this section and the subsequent case law indicate that a complaint does not itself satisfy the notice requirements. *Powell v. District of Columbia*, 645 F. Supp. 66 (D.D.C. 1986).

Notice by third-party plaintiff. — The notice period under this section for a third-party plaintiff to give the District notice of a claim begins to run from the time defendant is sued. *Thomas v. Group Health Ass'n*, 114 WLR 1493 (Super. Ct. 1986).

Effective notice can be given, without a specific delegation, by one not the claimant, his agent or attorney where it is obvious that a claim is being made which sets forth the claimant's identity and the approximate time, place, cause and circumstances of the injury or damage and the District can show no resulting prejudice. *Smith v. District of Columbia*, 463 F.2d 962 (D.C. Cir. 1972).

Attorney can act as agent for all class members and notice given on behalf of approximately 1,200 claimants by him is sufficient to

comply with this section. *Dellums v. Powell*, 566 F.2d 216 (D.C. Cir. 1977), cert. denied, 438 U.S. 916, 98 S. Ct. 3147, 57 L. Ed. 2d 1161 (1978).

Membership in plaintiff class of former suit not sufficient notice. — Plaintiffs' claim that the District was adequately informed of their alleged injuries by a complaint in another lawsuit against District officials, instituted on behalf of a class which included the present plaintiffs, was not so compelling that a federal appellate court would by mandamus order a district judge to allow the plaintiffs' suit against the District. *Knable v. Wilson*, 570 F.2d 957 (D.C. Cir. 1977).

Police reports are substitutes for actual notice given, and where such facts as would give notice are not contained in the report, this section is not satisfied. *Braxton v. National Capital Hous. Auth.*, App. D.C., 396 A.2d 215 (1978).

Provision in this section that permits reports by the police to serve as an alternative form of notice is based on the idea that written notice by a claimant should not be a prerequisite to legal action if, in fact, actual notice in the form of a police report has been received by the District. *Allen v. District of Columbia*, App. D.C., 533 A.2d 1259 (1987).

Sufficiency required of police report. — For a police accident report to satisfy the statutory notice of a claim requirement under this section, it must contain information as to the time, place, cause and circumstances of the injury or damage with at least the same degree of specificity required of a written notice filed by a claimant; and must do more than merely report the happening of an event or accident. *Miller v. Spencer*, App. D.C., 330 A.2d 250 (1974).

Although the second sentence of this section does not expressly incorporate the requirements of the first sentence concerning notice of the approximate time, place, cause and circumstances of an incident, incorporation of those specific requirements is necessary in order for the police report provision to be consistent with the statute's purpose of assuring adequate information for the proper and efficient disposition of claims. *Pitts v. District of Columbia*, App. D.C., 391 A.2d 803 (1978).

Although a police report, by its nature, may not fully reflect every salient fact concerning the potential liability of the District with the same degree of clarity and specificity as a document drawn by an attorney, a report provides sufficient notice to satisfy the statutory requirement if it recites facts from which it could be reasonably anticipated that a claim against the District might arise. *Pitts v. District of Columbia*, App. D.C., 391 A.2d 803 (1978).

The sufficiency of a police report as notice

under this section depends not on reliability, but on whether it sets forth the substance of the information which would have been required in a written notice of claim. *Eskridge v. Jackson*, App. D.C., 401 A.2d 986 (1979).

FBI report not equivalent of police report. — An FBI report of an incident giving rise to a claim in tort against the District is not an equivalent of a Metropolitan Police Department report permitted as an exception under this section when the claimant fails to allege actual receipt of the FBI report by District officials. *Eskridge v. Jackson*, App. D.C., 401 A.2d 986 (1979).

Police report held sufficient notice. — The requirements of this section are satisfied where a detective immediately and thoroughly investigated an accident and promptly made a detailed official report. *Thomas v. Potomac Elec. Power Co.*, 266 F. Supp. 687 (D.D.C. 1967).

The notice provisions in a suit by the father of a woman who had been raped and murdered by a parolee under the supervision of the Department of Corrections were satisfied by police reports filed with relation to such murder and rape. *Rieser v. District of Columbia*, 580 F.2d 647 (D.C. Cir. 1978).

Police report held insufficient notice. — A police report, which sets forth the circumstances surrounding plaintiff's arrest for unlawful entry and carrying a dangerous weapon, is insufficient notice of an injury under this section. *Brown v. District of Columbia*, App. D.C., 304 A.2d 292 (1973).

Police reports failed to provide the type of information which would have allowed the District reasonably to anticipate the claims of false arrest, assault and battery, and/or negligence. *Allen v. District of Columbia*, App. D.C., 533 A.2d 1259 (1987).

A police report which pertained to a collision involving an automobile owned by District of Columbia and which indicated that no personal injuries resulted from the accident, failed to satisfy requirements of "notice of claim" under this section with respect to motorist's claim for personal injuries. *Miller v. Spencer*, App. D.C., 330 A.2d 250 (1974).

A police report of the plaintiff's arrest, coupled with his trial and acquittal and official United States Attorney "reports" on such case, did not, for purposes of the plaintiff's claim for false arrest and malicious prosecution constitute sufficient compliance with this section. *Jenkins v. District of Columbia*, App. D.C., 379 A.2d 1177 (1977).

Police reports of shooting incidents which gave rise to claims against the city for personal injury failed to give timely notice under this section. *Cunningham v. District of Columbia*, App. D.C., 584 A.2d 573 (1990).

Notice deemed insufficient. — Notice, containing no mention whatsoever of where the accident took place, does not satisfy the requirement of “a reasonable guide for inspection.” *Worthy v. District of Columbia*, App. D.C., 601 A.2d 581 (1991).

Plaintiff's notice to the District of Columbia as required by this section was deficient and invalid because her letter of notice stated that counsel was retained to represent her relative to claims against hospital and individual as a result of an involuntary hospitalization proceeding that was taken against her beginning on or about a certain date. This was an allegation and did not furnish factual details of what wrongful actions occurred. *Magwood v. Giddings*, 122 WLR 241 (Super. Ct. 1993).

Description of location of accident sufficient. — Notice which narrowed the location of the alleged accident to a 150-foot stretch of sidewalk along a specified street, leading to a mailbox at a specified corner, provided a sufficient description of the location of the accident. *Gaskins v. District of Columbia*, App. D.C., 579 A.2d 719 (1990).

Where plaintiff's letter to the Mayor identified the location of the water meter cover which caused her injury within 75 feet or less of its actual location, indicated the correct block and side of the street, referenced “close proximity” to an existing street address, and did not contain any actual misstatements, the letter sufficiently specified the location of plaintiff's accident. *Hardy v. District of Columbia*, App. D.C., 616 A.2d 338 (1992).

Fire department report insufficient notice. — The mere existence of a fire department report, would not give the District reason to anticipate possible litigation, and does not satisfy the notice requirement of this section. *Campbell v. District of Columbia*, App. D.C., 568 A.2d 1076 (1990).

Plaintiff's letter deemed insufficient notice. — Long-established authority in this jurisdiction made it clear that plaintiff's letter did not satisfy the requirements of this section. The date was uncertain, the place was uncertain, since the D.C. Jail is not located in Lorton, Virginia and there are 7 correctional facilities in Lorton, it was unclear whether plaintiff was an inmate, employee or visitor. Nor did the letter give any notice of the cause and circumstances of the injury or damage, or the nature of the injury or damage. *Winters v. District of Columbia*, App. D.C., 595 A.2d 960 (1991).

Purported notice lacked sufficient detail about the circumstances of the injury to enable the District to conduct a meaningful investigation. *Hunter v. District of Columbia*, 943 F.2d 69 (D.C. Cir. 1991).

Noncompliance with notice provision cannot bar breach of contract claim against District. — In the contractual con-

text, where — almost by definition — the District is on notice that any breach will result in an injury, failure to give notice adequate to comply with this section does not bar a contract claim against the District. *District of Columbia v. Campbell*, App. D.C., 580 A.2d 1295 (1990).

Subcontractor's claims require notice. — The injury to a subcontractor whom a general contractor failed to pay occurred not when the general contractor failed to post a payment bond but, rather, when the general contractor failed to pay the subcontractor for work performed, thus, the District as an entity could not have been aware of the injury to the subcontractor at the time it occurred, the subcontractors claims would not be exempt from the notice requirements of this section. *District of Columbia v. Campbell*, App. D.C., 580 A.2d 1295 (1990).

Administrative complaint to officials at Lorton Reformatory is not the equivalent of a police report and thus does not satisfy this section's requirement of notice to the District of Columbia. *Jones v. Palmer*, 113 WLR 2633 (Super. Ct. 1985).

Letter advising of claim not allowed to be read to jury. — A court may properly refuse to permit plaintiff's counsel to read to the jury a letter written by plaintiff's counsel to the council of the District of Columbia advising them of plaintiff's claim. *Curtis v. District of Columbia*, 363 F.2d 973 (D.C. Cir. 1966).

Action against District barred. — Dismissal of third-party complaint against the District barred, on basis of *res judicata*, suit by same party against the District for contribution; that dismissal, based on this section, was a final adjudication on the merits of the third-party complaint. *Group Health Ass'n v. District of Columbia Gen. Hosp.*, App. D.C., 540 A.2d 1104 (1988).

Counterclaims for rent abatement not precluded. — This section does not preclude actions for rent abatements based on housing code violations raised as counterclaims to repossession actions initiated by the District government. *District of Columbia v. Daniel*, 111 WLR 621 (Super. Ct. 1983).

Cited in *Spann v. Commissioners of D.C.*, 443 F.2d 715 (D.C. Cir. 1970); *Toomey v. District of Columbia*, App. D.C., 315 A.2d 565 (1974); *Hill v. District of Columbia*, App. D.C., 345 A.2d 867 (1975); *District of Columbia v. Morris*, App. D.C., 367 A.2d 571 (1976); *Pinkney v. District of Columbia*, 439 F. Supp. 519 (D.D.C. 1977); *Marshall v. District of Columbia*, App. D.C., 391 A.2d 1374 (1978); *Kelley v. Morris*, App. D.C., 400 A.2d 1045 (1979); *Keith v. Washington*, App. D.C., 401 A.2d 468 (1979); *Kelton v. District of Columbia*, App. D.C., 413 A.2d 919 (1980); *Maddox v. Bano*, App. D.C., 422 A.2d 763 (1980); *Warren v. District of Columbia*, App. D.C., 444 A.2d 1 (1981); *Nickens v. District of*

Columbia, 110 WLR 1737 (Super. Ct. 1982); John Doe v. District of Columbia, 697 F.2d 1115 (D.C. Cir. 1983); Group Health Ass'n v. Gatlin, App. D.C., 463 A.2d 700 (1983); Hobson v. Brennan, 625 F. Supp. 459 (D.D.C. 1985); District of Columbia v. Fowler, App. D.C., 497 A.2d 456 (1985); Williams v. District of Columbia, 676 F. Supp. 329 (D.D.C. 1987); Bond v. Serano, App. D.C., 566 A.2d 47 (1989); Williams v.

Palmer, 115 WLR 1113 (Super. Ct. 1987); Campbell v. Cumbari Assocs., 115 WLR 1729 (Super. Ct. 1987); Carole v. Stokes, 117 WLR 2585 (Super. Ct. 1989); D.C. v. P.L., 118 WLR 1729 (Super. Ct. 1990); Krieger v. Trane Co., 765 F. Supp. 756 (D.D.C. 1991); Richbow v. District of Columbia, App. D.C., 600 A.2d 1063 (1991); Morgan v. Barry, 785 F. Supp. 187 (D.D.C. 1992).

§ 12-310. Actions arising out of death or injury caused by defective or unsafe improvements to real property.

(a)(1) Except as provided in subsection (b), any action —

(A) to recover damages for —

(i) personal injury,

(ii) injury to real or personal property, or

(iii) wrongful death,

resulting from the defective or unsafe condition of an improvement to real property, and

(B) for contribution or indemnity which is brought as a result of such injury or death,

shall be barred unless in the case where injury is the basis of such action, such injury occurs within the ten-year period beginning on the date the improvement was substantially completed, or in the case where death is the basis of such action, either such death or the injury resulting in such death occurs within such ten-year period.

(2) For purposes of this subsection, an improvement to real property shall be considered substantially completed when —

(A) it is first used, or

(B) it is first available for use after having been completed in accordance with the contract or agreement covering the improvement, including any agreed changes to the contract or agreement, whichever occurs first.

(b) The limitation of actions prescribed in subsection (a) shall not apply to —

(1) any action based on a contract, express or implied, or

(2) any action brought against the person who, at the time the defective or unsafe condition of the improvement to real property caused injury or death, was the owner of or in actual possession or control of such real property, or

(3) any manufacturer or supplier of any equipment or machinery or other articles installed in a structure upon real property, or

(4) any action brought by the District of Columbia government. (Oct. 27, 1972, 86 Stat. 1275, Pub. L. 92-579, § 1(a); 1973, Ed., § 12-310; Feb. 28, 1987, D.C. Law 6-202, § 4, 34 DCR 527.)

Cross references. — As to limitations for negligence causing death, see § 16-2702.

Legislative history of Law 6-202. — See note to § 12-311.

Constitutionality. — The classification

made by this section does not violate the equal protection clause. Contractors and owners are treated differently by the statute because contractors have no control over an owner whose neglect in maintaining an improvement may

cause dangerous or unsafe conditions to develop over a period of years. *Britt v. Schindler Elevator Corp.*, 637 F. Supp. 734 (D.D.C. 1986).

This section rests on reasonable grounds and does not violate the due process and equal protection clauses of the Fifth Amendment of the U.S. Constitution. *Sandoe v. Lefta Assocs.*, App. D.C., 559 A.2d 732 (1988).

Retroactivity of statute of limitation. — The District of Columbia government may not change or apply statutes of limitation or repose (D.C. Law 6-202) retroactively in order to extricate itself from litigation already pending on the effective date of the change. *District of Columbia v. Owens-Corning Fiberglass Corp.*, 115 WLR 1905 (Super. Ct. 1987).

The retroactive amendment to this section by D.C. Law 6-202 could be applied to defendant without violating its rights under the due process clause of the Fifth Amendment. *Wesley Theological Sem. v. United States Gypsum Co.*, 876 F.2d 119 (D.C. Cir. 1989), cert. denied, 494 U.S. 1003, 110 S. Ct. 1296, 108 L. Ed. 2d 473 (1990).

Suit brought by the District to vindicate public rights immune from running of statutes of limitation. — The District of Columbia is immune from the running of the statutes of limitation and repose when it brings suit seeking to vindicate public rights and involving the performance of public functions. *District of Columbia v. Owens-Corning Fiberglass Corp.*, App. D.C., 572 A.2d 394 (1989), cert. denied, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

In its municipal capacity, the District enjoys a common-law immunity under the doctrine of *nullum tempus* which expresses a legitimate public policy of preserving public rights, revenues, and property from injury or loss, by the negligence of public officers; and, although this is sometimes called a prerogative right, it is in fact nothing more than a reservation, or exception, introduced for the public benefit, and equally applicable to all governments. *District*

of Columbia v. Owens-Corning Fiberglass Corp., App. D.C., 572 A.2d 394 (1989), cert. denied, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

Where the District acquires a right of action directly related to its duty to perform a service to the public, or to vindicate an overwhelmingly public interest or right, a suit to recover money damages to enable the District to perform that service is public rather than proprietary and falls within the highly circumscribed municipal immunity from the running of time. *District of Columbia v. Owens-Corning Fiberglass Corp.*, App. D.C., 572 A.2d 394 (1989), cert. denied, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

Tort actions. — The broad language of this section barring any action other than an action based on contract, necessarily bars a strict liability tort claim not falling within the 10-year time limit. *Britt v. Schindler Elevator Corp.*, 637 F. Supp. 734 (D.D.C. 1986).

Improvement to real property. — Elevators are an integral part of any multi-story building, so that work performed on an elevator constitutes an improvement under this section. *Britt v. Schindler Elevator Corp.*, 637 F. Supp. 734 (D.D.C. 1986).

Elevator modernization. — A contractor who contracted to modernize the elevators in 1959 is entitled to the protection of the statute of repose. *Britt v. Schindler Elevator Corp.*, 637 F. Supp. 734 (D.D.C. 1986).

This section insulates from liability manufacturer of component part of improvement to real property. *J.H. Westerman Co. v. Fireman's Fund Ins. Co.*, App. D.C., 499 A.2d 116 (1985).

Cited in *Sandoe v. Lefta Assoc.*, 114 WLR 2389 (Super. Ct. 1986); *Bussineau v. President & Dirs. of Georgetown College*, App. D.C., 518 A.2d 423 (1986); *Nelson v. American Nat'l Red Cross*, 815 F. Supp. 501 (D.D.C. 1993), modified on other grounds, 26 F.3d 193 (D.C. Cir. 1994).

§ 12-311. Actions arising out of death or injury caused by exposure to asbestos.

(a) In any civil action for injury or illness based upon exposure to asbestos, the time for the commencement of the action shall be the later of the following:

- (1) Within one year after the date the plaintiff first suffered disability; or
- (2) Within one year after the date the plaintiff either knew, or through the exercise of reasonable diligence should have known, that the disability was caused or contributed to by the exposure.

(b) "Disability" as used in subsection (a) of this section means the loss of time from work as a result of the exposure that precludes the performance of the employee's regular occupation.

(c) In an action for the wrongful death of any plaintiff's decedent, based upon exposure to asbestos, the time for commencement of an action shall be the later of the following:

(1) Within one year from the date of the death of the plaintiff's decedent;
or

(2) Within one year from the date the plaintiff first knew, or through the exercise of reasonable diligence should have known, that the death was caused or contributed to by the exposure. (Feb. 28, 1987, D.C. Law 6-202, § 5, 34 DCR 527.)

Legislative history of Law 6-202. — Law 6-202, the "District of Columbia Statute of Limitations Amendment Act of 1986," was introduced in Council and assigned Bill No. 6-510, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 25, 1986 and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-261 and transmitted to both Houses of Congress for its review.

Asbestos-related injury. — The legislative history demonstrates that the intent behind enactment was to expand the period of time in which plaintiffs could sue to recover for asbestos-related injury or illness. And both that legislative history and the plain meaning of subsection (b) demonstrate just as clearly that subsection (a) was directed only at employees who are disabled from work because of exposure to asbestos, and not to the broader, general population of potential victims of such illness or injury. Defendants' reading which would give nonemployee victims of an asbestos illness or injury less time within which to sue than they previously had under § 12-301 would contravene the intent of the legislature and the plain meaning of subsection (b) of the statute, and must be rejected. *Gwyer v. Celotex Corp.*, 117 WLR 2617 (Super. Ct. 1989).

Suit brought by the District to vindicate public rights immune from running of statutes of limitation. — The District of Columbia is immune from the running of the statutes of limitation and repose when it brings suit seeking to vindicate public rights and involving the performance of public functions. *District of Columbia v. Owens-Corning Fiberglas Corp.*, App. D.C., 572 A.2d 394 (1989), cert. denied, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

In its municipal capacity, the District enjoys a common-law immunity under the doctrine of *nullum tempus* which expresses a legitimate public policy of preserving public rights, revenues, and property from injury or loss, by the negligence of public officers; and, although this is sometimes called a prerogative right, it is in

fact nothing more than a reservation, or exception, introduced for the public benefit, and equally applicable to all governments. *District of Columbia v. Owens-Corning Fiberglas Corp.*, App. D.C., 572 A.2d 394 (1989), cert. denied, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

Where the District acquires a right of action directly related to its duty to perform a service to the public, or to vindicate an overwhelmingly public interest or right, a suit to recover money damages to enable the District to perform that service is public rather than proprietary and falls within the highly circumscribed municipal immunity from the running of time. *District of Columbia v. Owens-Corning Fiberglas Corp.*, App. D.C., 572 A.2d 394 (1989), cert. denied, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

Because the District of Columbia enjoys a limited municipal immunity from the effects of the statutes of limitation and repose, and it is a governmental function of the District to remove and abate the widespread contamination of public buildings with asbestos, which poses a substantial threat to public health, the District may bring an action for damages resulting from that contamination even after the statutes of limitations and repose would ordinarily have run. *District of Columbia v. Owens-Corning Fiberglas Corp.*, App. D.C., 572 A.2d 394 (1989), cert. denied, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

Where the government is suing for the cost of removing a public danger, asbestos from public buildings, resulting from the alleged tortious activities of defendant; the damages recovered from such a suit would therefore be used in the performance of a public function. Under these circumstances, the District's financial interest is secondary. *District of Columbia v. Owens-Corning Fiberglas Corp.*, App. D.C., 572 A.2d 394 (1989), cert. denied, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

Cited in *Wesley Theological Sem. v. United States Gypsum Co.*, 876 F.2d 119 (D.C. Cir. 1989), cert. denied, 494 U.S. 1003, 110 S. Ct. 1296, 108 L. Ed. 2d 473 (1990).

TITLE 13. PROCEDURE GENERALLY.

Chapter

1. Rules of Procedure..... [Repealed].
3. Process and Parties..... §§ 13-301 to 13-341.
4. Civil Jurisdiction and Service Outside the District
of Columbia..... §§ 13-401 to 13-434.
5. Counterclaims..... §§ 13-501 to 13-505.
7. Trial..... [Repealed].

CHAPTER 1. RULES OF PROCEDURE.

Sec.

13-101. [Repealed].

§ 13-101. Prescription of rules by courts.

Repealed. July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 142(1)(A).

CHAPTER 3. PROCESS AND PARTIES.

Subchapter I. General Provisions.

Sec.

13-301. Courts to which applicable.

13-302. Service by marshal.

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Subchapter I. General Provisions.

§ 13-301. Courts to which applicable.

Except as otherwise specifically provided by law or rules of court, this chapter applies to the District of Columbia courts. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 142(2); 1973 Ed., § 13-301.)

§ 13-302. Service by marshal.

Subject to the provisions of law or rules of court for service by other persons, the United States marshal for the District of Columbia or his deputy shall serve the process of the District of Columbia Court of Appeals, and the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 142(3); 1973 Ed., § 13-302.)

Receipt of process by minor. — Fifteen-year-old is considered to be a person of suitable age and discretion for the purpose of receiving process. *Day v. United Sec. Corp.*, App. D.C., 272 A.2d 448 (1970).

Cited in *Rudd v. Rudd*, App. D.C., 278 A.2d 120 (1971).

§ 13-302.1. Service by Metropolitan Police Department.

(a) The Metropolitan Police Department shall execute, upon request, a bench warrant in any case in which paternity establishment or child support is at issue.

(b) The Metropolitan Police Department shall serve civil process in any case in which paternity establishment or child support is at issue and shall serve the process at the request of the IV-D agency in any IV-D case. In a non-IV-D case, a judicial officer may order the Metropolitan Police Department to serve process pursuant to this section or to accompany a private process server upon

a finding of danger to the process server or a finding that the respondent is evading service. The affidavit of a private process server shall be considered sufficient evidence for a finding of danger or evasion of service.

(c) A special unit that consists of at least 4 police officers shall be established for the exclusive purpose of performing the duties enumerated in section 13-302.1(a) and (b).

(d) The IV-D agency shall provide funds to the Metropolitan Police Department to pay for the full cost, including administrative costs, of providing the services in section 13-302.1(a) and (b) in all IV-D cases. (June 18, 1991, D.C. Law 9-5, § 3(b), 38 DCR 2717; Aug. 17, 1991, D.C. Law 9-39, § 3(b), 38 DCR 4970.)

Legislative history of Law 9-5. — Law 9-5, the “District of Columbia Paternity Establishment Temporary Act of 1991,” was introduced in Council and assigned Bill No. 9-142. The Bill was adopted on first and second readings on March 5, 1991, and April 9, 1991, respectively. Signed by the Mayor on April 26, 1991, it was assigned Act No. 9-20 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-39. — Law

9-39, the “District of Columbia Paternity Establishment Act of 1991,” was introduced in Council and assigned Bill No. 9-2, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-76 and transmitted to both Houses of Congress for its review.

§ 13-303. Service or execution on Sunday.

Repealed. June 18, 1991, D.C. Law 9-5, § 3(c), 38 DCR 2717; Aug. 17, 1991, D.C. Law 9-39, § 3(c), 38 DCR 4970.

Legislative history of Law 9-5. — See note to § 13-302.1.

Legislative history of Law 9-39. — See note to § 13-302.1.

Subchapter II. Service of Process; Legal Representatives.

§ 13-331. Service under other laws and rules of court.

This chapter does not limit or affect the right to serve process in any other manner now or hereafter required or permitted by:

(1) other law, including chapter 4 of this title or, any other provisions of this Code; or

(2) rule of court. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 142(4); 1973 Ed., § 13-331.)

Cross references. — As to service of process in attachment and garnishment proceedings, see § 16-502.

As to service of process upon corporations, see § 29-812.

As to service of process upon insurance companies, see §§ 35-423 and 35-1527.

§ 13-332. Service on infants; appointment and compensation of guardian and attorney.

(a) When an infant is a party defendant in an action, the summons and complaint shall be served upon him personally and, when he is under 16 years

of age, upon the person with whom he resides, if within the District. The infant shall be produced in court unless, for cause shown, the court dispenses with his appearance. The provisions of rules of court regarding guardians ad litem apply, and whenever in the judgment of the court the interests of an infant defendant require it, the court shall assign an attorney to represent the infant whose compensation shall be paid by the plaintiff, or out of the estate of the infant, at the discretion of the court.

(b) An infant who secretes himself or evades service of process may be proceeded against as if he were a nonresident.

(c) Whoever secretes an infant against whom process has issued, so as to prevent service of the process, or prevents his appearance in court, is liable to attachment and punishment as for contempt. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1; 1973 Ed., § 13-332.)

Cross references. — As to appointment of guardian ad litem in proceedings for condemnation of insanitary buildings, see § 5-709.

As to age of majority, see note following § 21-101.

Section references. — This section is referred to in § 13-340.

§ 13-333. Service on incompetent persons.

When a person non compos mentis is a party defendant in an action, process shall be served upon him personally, if within the District, and upon his committee, if there is one within the District. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1; 1973 Ed., § 13-333.)

Cross references. — As to appointment of guardian ad litem in proceedings for condemnation of insanitary buildings, see § 5-709.

§ 13-334. Service on foreign corporations.

(a) In an action against a foreign corporation doing business in the District, process may be served on the agent of the corporation or person conducting its business, or, when he is absent and can not be found, by leaving a copy at the principal place of business in the District, or, where there is no such place of business, by leaving a copy at the place of business or residence of the agent in the District, and that service is effectual to bring the corporation before the court.

(b) When a foreign corporation transacts business in the District without having a place of business or resident agent therein, service upon any officer or agent or employee of the corporation in the District is effectual as to actions growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or growing out of any tort committed in the District. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1; 1973 Ed., § 13-334.)

“Doing business” means any continuing corporate presence in the forum directed at advancing a corporation’s objectives. *Ramamurti v. Rolls-Royce, Ltd.*, 454 F. Supp.

407 (D.D.C. 1978), *aff’d*, 612 F.2d 587 (D.C. Cir. 1980); *AMAF Int’l Corp. v. Ralston Purina Co.*, App. D.C., 428 A.2d 849 (1981).

Effect of doing business on extent of

amenability to service. — As long as a foreign corporation is “doing business in the District,” it is amenable to service under this section regardless of any connection between the claim for relief and the District. *Ramamurti v. Rolls-Royce, Ltd.*, 454 F. Supp. 407 (D.D.C. 1978), *aff’d*, 612 F.2d 587 (D.C. Cir. 1980).

A foreign corporation which carries on a consistent pattern of regular business activity within the District is subject to the general jurisdiction of the courts, upon proper service, and not merely for suits arising out of its activity in the District of Columbia. *AMAF Int’l Corp. v. Ralston Purina Co.*, App. D.C., 428 A.2d 849 (1981).

No personal jurisdiction over nonresident unless service authorized by statute. — Before a court may properly assert personal jurisdiction over a nonresident defendant, service of process to that defendant must be authorized by statute and be consistent with due process. *AMAF Int’l Corp. v. Ralston Purina Co.*, App. D.C., 428 A.2d 849 (1981).

This section is the predecessor to § 13-423 and continues to exist as a basis for personal jurisdiction alongside that section’s more comprehensive long-arm provisions. *AMAF Int’l Corp. v. Ralston Purina Co.*, App. D.C., 428 A.2d 849 (1981); *Ross v. Product Dev. Corp.*, 736 F. Supp. 285 (D.D.C. 1989).

Section 13-423 is not exclusive and where a foreign corporation is authorized to do business in the District and has an address at which its agent may be served, this section comes into play. *AMAF Int’l Corp. v. Ralston Purina Co.*, App. D.C., 428 A.2d 849 (1981).

Jurisdiction under this section is not limited to particular business transactions in District, unlike § 13-423. *AMAF Int’l Corp. v. Ralston Purina Co.*, App. D.C., 428 A.2d 849 (1981).

Two part test to establish jurisdiction. — Court may exert jurisdiction over corporate defendant pursuant to this section if two conditions are met: first, defendant must be “doing business” in the District, and second, the exercise of jurisdiction must comport with due process. Unlike the long-arm statute, this section confers jurisdiction over the defendant for all purposes, not merely for those claims arising out of the defendant’s contacts with the District. *Ross v. Product Dev. Corp.*, 736 F. Supp. 285 (D.D.C. 1989).

Corporation is not required to maintain a permanent office in the District in order to be “doing business in the District.” *Price v. Griffin*, App. D.C., 359 A.2d 582 (1976); *Ross v. Product Dev. Corp.*, 736 F. Supp. 285 (D.D.C. 1989).

Commercial relations with federal government may support jurisdiction. — Corporations may be subjected to personal jurisdiction in the District when their contacts with the

District involve substantial commercial relations with the federal government acting in its proprietary capacity. *Ramamurti v. Rolls-Royce, Ltd.*, 454 F. Supp. 407 (D.D.C. 1978), *aff’d*, 612 F.2d 587 (D.C. Cir. 1980).

Maintenance of an office within the District for the purpose of transacting a substantial amount of business with the federal government is “doing business in the District” within the meaning of this section. *Raymond v. Anthony Co.*, 233 F. Supp. 305 (D.D.C. 1964).

Although some of a foreign corporation’s activities involved contacts with the government in its nonproprietary role, personal jurisdiction over the company was proper where it did a substantial amount of business in the District which directly involved commercial contacts with the government as purchaser of the corporation’s products. *Ramamurti v. Rolls-Royce, Ltd.*, 454 F. Supp. 407 (D.D.C. 1978), *aff’d*, 612 F.2d 587 (D.C. Cir. 1980).

Parent doing business through subsidiary. — If a subsidiary is merely an agent through which the parent conducts business in a jurisdiction, then the subsidiary’s business will be viewed as that of the parent and the latter will be said to be doing business in the jurisdiction through the subsidiary. *Ramamurti v. Rolls-Royce, Ltd.*, 454 F. Supp. 407 (D.D.C. 1978), *aff’d*, 612 F.2d 587 (D.C. Cir. 1980).

Business activities sufficient to constitute “doing business.” — Foreign corporation is “doing business” within the District of Columbia where the corporation has a business office in District, sells stock in the District, and has made a patent licensing agreement for the District. *Price v. Griffin*, App. D.C., 359 A.2d 582 (1976).

New Jersey insurer, which administers its hospital insurance contracts in the District of Columbia, through officers, personnel and facilities of a sister insurer, is engaged in the “transaction of business” in the District. *Washington v. Hospital Serv. Plan*, 345 F.2d 105 (D.C. Cir. 1965).

Where corporation has been authorized for more than four years to operate in the District, maintains a registered agent in the District, conducts business in the District on a regular and ongoing basis 21 out of 52 weeks each year, year after year, and its activities clearly advance the corporation’s purpose as set forth in its articles of incorporation, the corporation “does business” pursuant to this section in the District of Columbia and its business contacts with the District satisfy the “minimum contacts” requirement of the due process clause. *Ross v. Product Dev. Corp.*, 736 F. Supp. 285 (D.D.C. 1989).

Facts sufficient to support exercise of personal jurisdiction. — Where plaintiff asserts that its decision to initiate the particular transaction involved in the litigation was

based, in part, on defendant's advertising in the District of Columbia and its business reputation, these facts are sufficient to support the exercise of personal jurisdiction over the defendant under this section. *AMAF Int'l Corp. v. Ralston Purina Co.*, App. D.C., 428 A.2d 849 (1981).

Business activities insufficient to constitute "doing business." — Business activities consisting of purposefully making a flight timetable available in the District through the actions of another airline and regularly placing advertisements in the so-called joint timetable were insufficient to bring the defendant within the jurisdiction of the District's courts on a claim having absolutely no connection with the District. *Ramamurti v. Rolls-Royce, Ltd.*, 454 F. Supp. 407 (D.D.C. 1978), *aff'd*, 612 F.2d 587 (D.C. Cir. 1980).

Maintenance of an office within the District which is used solely for the purpose of maintaining continuing relationships with and exchanging information with the state department, other federal agencies, diplomatic missions, and public and private educational and international organizations is not "doing business in the District" within the meaning of this section. *Fandel v. Arabian Am. Oil Co.*, 345 F.2d 87 (D.C. Cir. 1965).

The sending and receiving of messages by the United States National Central Bureau, designated in accordance with the Interpol constitution, do not constitute acts as an agent of Interpol such as to make Interpol a corporation "which does business ... in Washington, D.C." *Sami v. United States*, 617 F.2d 755 (D.C. Cir. 1979).

Narrow construction of "doing business." — The "doing business" standard must be construed narrowly in cases where the claim for relief bears no relation to the contacts with the District which form the jurisdictional base.

Ramamurti v. Rolls-Royce, Ltd., 454 F. Supp. 407 (D.D.C. 1978), *aff'd*, 612 F.2d 587 (D.C. Cir. 1980).

Effect of not "doing business in the District." — Summary dismissal for want of jurisdiction is proper where defendant corporation does not do business in the District. *Harmatz v. Zenith Radio Corp.*, App. D.C., 265 A.2d 291 (1970).

Receipt of service by agent proper. — Receipt of service of process on foreign corporation by individual is proper where, as agent of the corporation, individual is empowered to bind corporation in sale of stock and holds himself out as managing director of corporation. *Price v. Griffin*, App. D.C., 359 A.2d 582 (1976).

Jurisdiction over Michigan corporation which advertised and maintained resident agent in District precluded by due process. — See *Bayles v. K-Mart Corp.*, 636 F. Supp. 852 (D.D.C. 1986).

Claims arising from transactions occurring outside the District. — This section confers jurisdiction upon trial courts in the District over foreign corporations doing substantial business in the District of Columbia, even though the claim arises from a transaction which occurred elsewhere, and hence, outside the scope of the long-arm statute. *Guevara v. Reed*, App. D.C., 598 A.2d 1157 (1991).

Cited in *Union Storage Co. v. Knight*, App. D.C., 400 A.2d 316 (1979); *Steinberg v. International Criminal Police Org.*, 672 F.2d 927 (D.C. Cir. 1981); *Dixon v. Stephenson Inc.*, 614 F. Supp. 60 (D.D.C. 1985); *Reuber v. United States*, 787 F.2d 599 (D.C. Cir. 1986); *Kapar v. Kuwait Airways Corp.*, 663 F. Supp. 1065 (D.D.C. 1987), modified, 845 F.2d 1100 (D.C. Cir. 1988); *Lex Tex Ltd. v. Skillman*, App. D.C., 579 A.2d 244 (1990); *Trerotola v. Cotter*, App. D.C., 601 A.2d 60 (1991).

§ 13-335. Service by publication on domestic or foreign corporations.

In an action specified by section 13-336, when process can not be served upon a domestic or foreign corporation, the corporation may be proceeded against as a nonresident defendant, by notice by publication. (Dec. 23, 1963, 77 Stat. 514, Pub. L. 88-241, § 1; 1973 Ed., § 13-335.)

§ 13-336. Service by publication on nonresidents, absent defendants, and unknown heirs or devisees.

(a) In actions specified by subsection (b) of this section, publication may be substituted for personal service of process upon a defendant who can not be found and who is shown by affidavit to be a nonresident, or to have been absent

from the District for at least six months, or against the unknown heirs or devisees of deceased persons.

(b) This section applies only to:

- (1) actions for partition;
- (2) actions for divorce or annulment;
- (3) actions for child custody under D.C. Code, title 16, chapter 45;
- (4) actions by attachment;
- (5) actions for foreclosure of mortgages and deeds of trust;
- (6) actions for the establishment of title to real estate by possession;
- (7) actions for the enforcement of mechanics' liens, and other liens against real or personal property within the District; and
- (8) actions that have for their immediate object the enforcement or establishment of any lawful right, claim, or demand to or against any real or personal property within the jurisdiction of the court. (Dec. 23, 1963, 77 Stat. 514, Pub. L. 88-241, § 1; 1973 Ed., § 13-336; Mar. 10, 1983, D.C. Law 4-200, § 3, 30 DCR 125.)

Cross references. — As to service of process on nonresident operator of motor vehicle, see § 40-407.

Section references. — This section is referred to in §§ 13-335 and 13-337.

Legislative history of Law 4-200. — Law 4-200, the "District of Columbia Adoption of the Uniform Child Custody Jurisdiction and Marital or Parent and Child Long-Arm Jurisdiction Amendments Act of 1982," was introduced in Council and assigned Bill No. 4-237, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-284 and transmitted to both Houses of Congress for its review.

Strict construction. — This section is in derogation of the common law and must be strictly construed. *Rapid Rentals, Inc. v. Myers*, 115 WLR 2453 (Super. Ct. 1987).

Prerequisites to order authorizing constructive notice. — Before an order authorizing constructive notice is entered in a divorce action, it is incumbent upon the plaintiff to furnish the court the following information: (1) The time and place at which the parties last resided together as spouses; (2) the last time parties were in contact with each other; (3) the name and address of the last employer of defendant either during the time the parties resided together or at later time if known to the plaintiff; (4) the names and addresses of those

relatives known to be close to defendant; and (5) any other information which could furnish a fruitful basis for further inquiry by one truly bent on learning the present whereabouts of defendant. *Bearstop v. Bearstop*, App. D.C., 377 A.2d 405 (1977).

Judicial finding in foreign divorce decree held functional equivalent of required affidavit of nonresidence. *Brown v. Brown*, 110 WLR 2177 (Super. Ct. 1982).

Substituted service confers jurisdiction over claims in rem in divorce proceeding. — In a divorce proceeding substituted service is sufficient to confer jurisdiction as to claims in rem, including the divorce itself, and the resolution of certain issues affecting title to property in the District, but insufficient as to claims sounding in personam, such as alimony, costs, and counsel fees. *Brown v. Brown*, 110 WLR 2177 (Super. Ct. 1982).

Contract rights as personal property. — Insured's contract rights under policy of insurance do not constitute personal property for purposes of this section. *Rapid Rentals, Inc. v. Myers*, 115 WLR 2453 (Super. Ct. 1987).

Cited in *Poorvu v. Vacca*, 241 F. Supp. 948 (D.D.C. 1965); *Gomez v. Gomez*, App. D.C., 341 A.2d 423 (1975); *Albergott v. James*, App. D.C., 470 A.2d 266 (1983); *In re Tyree*, App. D.C., 493 A.2d 314 (1985); *Spevacek v. Wright*, App. D.C., 512 A.2d 1024 (1986); *Anderson v. Anderson*, 114 WLR 545 (Super. Ct. 1986); *Oler v. Oler*, 118 WLR 541 (Super. Ct. 1990).

§ 13-337. Personal service outside District in lieu of publication.

(a) In actions specified by section 13-336, personal service of process may be made on a nonresident defendant out of the District, and the service has the same effect, and no other, as an order of publication duly executed.

(b) The service may be made by any person not a party to or otherwise interested in the subject-matter in controversy. The return shall be made under oath in the District of Columbia, unless the person making the service is a sheriff, deputy sheriff, marshal, or deputy marshal, authorized to serve process where service is made. The return must show the time and place of service and that the defendant so served is a nonresident of the District of Columbia.

(c) The cost and expense of such service of process out of the District shall be borne by the party at whose instance it is made and may not be taxed as part of the costs in the case; but where the service of process is made by an authorized officer of the law specified by this section, the actual and usual cost of the service of process shall be taxed as a part of the costs in the case. (Dec. 23, 1963, 77 Stat. 514, Pub. L. 88-241, § 1; 1973 Ed., § 13-337.)

Burden of proof in motion to quash return of service. — Nonresident defendant who moves to quash return of personal service of process has the burden to prove that he owns no property in the District over which a court has jurisdiction. *Poorvu v. Vacca*, 241 F. Supp. 948 (D.D.C. 1965).

Substituted service confers jurisdiction over claims in rem in divorce proceeding. — In a divorce proceeding substituted service is

sufficient to confer jurisdiction as to claims in rem, including the divorce itself, and the resolution of certain issues affecting title to property in the District, but insufficient as to claims sounding in personam, such as alimony, costs, and counsel fees. *Brown v. Brown*, 110 WLR 2177 (Super. Ct. 1982).

Cited in *Anderson v. Anderson*, 114 WLR 545 (Super. Ct. 1986); *Oler v. Oler*, 118 WLR 541 (Super. Ct. 1990).

§ 13-338. Prerequisites for order of publication.

An order for the substitution of publication for personal service may not be made until:

(1) a summons for the defendant has been issued and returned “Not to be found,” and

(2) the nonresidence of the defendant or his absence for at least six months is proved by affidavit to the satisfaction of the court. (Dec. 23, 1963, 77 Stat. 514, Pub. L. 88-241, § 1; 1973 Ed., § 13-338.)

Fraud. — Divorce decree would be set aside for extrinsic fraud where there was a strong inference that at the time husband filed an affidavit of nonresidence to obtain publication rather than personal service under this section and an affidavit of non-mailing pursuant to which the court granted the divorce without requiring that a copy of published notice be mailed to the last known place of residence of

the wife pursuant to § 13-340 that the husband had actual knowledge of the wife’s whereabouts or that he failed to inquire of all persons likely to know of her whereabouts or that her whereabouts were not completely unknown to him. *Cobb v. Cobb*, 116 WLR 1993 (Super. Ct. 1988).

Cited in *Jordan v. Jordan*, 117 WLR 1757 (Super. Ct. 1989).

§ 13-339. Form of order of publication.

An order of publication shall be in the following or an equivalent form:

United States District Court for the District of Columbia.

AB, plaintiff,
versus
CD, defendant.

In _____. No. _____

The object of this action is to (state it briefly).

On motion of the plaintiff, it is this _____ day of _____, A.D. _____, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in cause of default.

Judge.

(Dec. 23, 1963, 77 Stat. 515, Pub. L. 88-241, § 1; 1973 Ed., § 13-339.)

Section references. — This section is referred to in § 13-340.

§ 13-340. Manner of publication; mailing of copy; default; appointment and compensation of guardian and attorney.

(a) An order of publication shall be published at least once a week for three successive weeks, or oftener, or for such further time as the court orders. In actions for divorce in which service by publication is authorized under this chapter, and satisfactory evidence is presented to the court that the plaintiff is unable to pay the cost of publishing an advertisement pursuant to D.C. Code sec. 13-340, without substantial hardship to himself or herself, or to his or her family, the court may direct that such publication may be made by posting the order of publication defined in D.C. Code sec. 13-339, for a period of twenty-one calendar days, in the Clerk's Office of the Family Division of the Superior Court of the District of Columbia.

(b) An order, judgment or decree may not be entered against an absent or nonresident defendant upon proof of notice by publication, unless the plaintiff, his agent, or attorney files in the action an affidavit showing that at least twenty days before applying for the order, judgment or decree he mailed, postpaid, a copy of the advertisement or the order of the publication posted pursuant to subsection (a) of this section, directed to the party therein ordered to appear, at his last known place of residence, or that after diligent effort he has been unable to ascertain the last place of residence of the party.

(c) On failure of the defendant to appear in obedience to the notice within the time stated therein, a judgment or decree by default may be entered.

(d) If the absent or nonresident defendant is an infant, the provisions of the rules of court concerning guardians ad litem and default judgments shall

apply, and the court may assign counsel to represent the infant in the manner provided by subsection (a) of section 13-332.

(e) If the absent or nonresident defendant is non compos mentis, the provisions of the rules of court concerning guardians ad litem and default judgments shall apply, and the court shall assign an attorney to represent the defendant, whose compensation shall be paid by the plaintiff, or out of the estate of the defendant, at the discretion of the court. (Dec. 23, 1963, 77 Stat. 515, Pub. L. 88-241, § 1; 1973 Ed., § 13-340; Apr. 7, 1977, D.C. Law 1-107, title II, § 201, 23 DCR 8737.)

Cross references. — As to age of majority, see note following § 21-101.

Section references. — This section is referred to in § 16-3706.

Legislative history of Law 1-107. — Law 1-107, the "District of Columbia Marriage and Divorce Act," was introduced in Council and assigned Bill No. 1-89, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on amended first readings on July 27, 1976 and September 15, 1976, and second readings on November 22, 1976 and December 7, 1976. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-193 and transmitted to both Houses of Congress for its review.

Prerequisites to order authorizing constructive notice. — Before an order authorizing constructive notice is entered in a divorce action, it is incumbent upon the plaintiff to furnish the court the following information: (1) The time and place at which the parties last resided together as spouses; (2) the last time the parties were in contact with each other; (3) the name and address of the last employer of defendant either during the time the parties resided together or at a later time if known to the plaintiff; (4) the names and addresses of those relatives known to be close to defendant; and (5) any other information which could furnish a fruitful basis for further inquiry by

one truly bent on learning the present whereabouts of defendant. *Bearstop v. Bearstop*, App. D.C., 377 A.2d 405 (1977).

Failure to comply. — Decree of divorce was void for lack of jurisdiction where insufficient efforts were made to locate the person who was served by publication, provide her with notice of the proceedings, and give her an opportunity to be heard. *Cobb v. Cobb*, 116 WLR 1993 (Super. Ct. 1988).

Fraud. — Divorce decree would be set aside for extrinsic fraud where there was a strong inference that at the time husband filed an affidavit of nonresidence to obtain publication rather than personal service under § 13-338 and an affidavit of non-mailing pursuant to which the court granted the divorce without requiring that a copy of published notice be mailed to the last known place of residence of the wife pursuant to this section that the husband had actual knowledge of the wife's whereabouts or that he failed to inquire of all persons likely to know of her whereabouts or that her whereabouts were not completely unknown to him. *Cobb v. Cobb*, 116 WLR 1993 (Super. Ct. 1988).

Cited in *Johnson v. Johnson*, App. D.C., 329 A.2d 451 (1974); *Gomez v. Gomez*, App. D.C., 341 A.2d 423 (1975); *In re E.S.N.*, App. D.C., 446 A.2d 16 (1982).

§ 13-341. Service by publication on persons unknown to be living or dead and on unknown heirs and devisees.

(a) When a person would be a proper party to a judicial proceeding if living, and upon allegation under oath and proof satisfactory to the court that it is unknown whether he is living or dead, he may be proceeded against as if he were living, and with like effect, if a representative of or claimant under him does not intervene in the action before final determination thereof, after notice by publication as in the case of nonresident parties.

(b) When a person who would have been a proper party to a judicial proceeding is dead, and it is unknown whether he died testate or left heirs, or his heirs and devisees are unknown, the unknown persons may be described as

the heirs or devisees of the person who, if living, would be the proper party. Notice shall be given by publication to them according to that description, and the same proceedings shall be had against them as are had against nonresident defendants, except that:

(1) the notice shall be published at least twice a month for such period, not less than three months without good cause shown, as the court orders, and the notice shall require the parties to appear on or before the day fixed in the notice to appear; and

(2) an order, judgment or decree may not be entered against the parties unless the court is satisfied that due diligence has been used to ascertain the unknown heirs. (Dec. 23, 1963, 77 Stat. 515, Pub. L. 88-241, § 1; 1973 Ed., § 13-341.)

Section references. — This section is referred to in § 16-3301.

CHAPTER 4. CIVIL JURISDICTION AND SERVICE OUTSIDE THE DISTRICT OF COLUMBIA.

Subchapter I. General Provisions.

Sec.

13-401. Relation to other provisions of law.

13-402. Uniformity of interpretation.

Sec.

13-424. Service outside the District of Columbia.

13-425. Inconvenient forum.

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§ 13-401. Relation to other provisions of law.

Except in cases of irreconcilable conflict, this chapter shall be construed to augment, and not to repeal, any other law of the District of Columbia authorizing another basis of jurisdiction or permitting another procedure for service in civil proceedings in the District of Columbia courts. (July 29, 1970, 84 Stat. 548, Pub. L. 91-358, title I, § 132(a); 1973 Ed., § 13-401.)

Alternative method for obtaining in personam jurisdiction. — This chapter and § 40-407 are alternative, independent methods for acquiring in personam jurisdiction over a nonresident motorist. *Liberty Mut. Ins. Co. v. Burgess*, App. D.C., 308 A.2d 775 (1973).

Cited in *Ramamurti v. Rolls-Royce, Ltd.*, 454

F. Supp. 407 (D.D.C. 1978), *aff'd*, 612 F.2d 587 (D.C. Cir. 1980); *Barclays Bank v. Tsakos*, App. D.C., 543 A.2d 802 (1988); *Frank Emmet Real Estate, Inc. v. Monroe*, App. D.C., 562 A.2d 134 (1989); *Lex Tex Ltd. v. Skillman*, App. D.C., 579 A.2d 244 (1990).

§ 13-402. Uniformity of interpretation.

When the statutory language so permits, this chapter shall be so interpreted and construed as to make it uniform with the laws of those jurisdictions which enact in comparable form the first two articles of the Uniform Interstate and International Procedure Act. (July 29, 1970, 84 Stat. 548, Pub. L. 91-358, title I, § 132(a); 1973 Ed., § 13-402.)

Cited in *Frank Emmet Real Estate, Inc. v. Monroe*, App. D.C., 562 A.2d 134 (1989).

Subchapter II. Bases of Personal Jurisdiction over Persons Outside the District of Columbia.

§ 13-421. Definition of person.

As used in this subchapter, the term “person” includes an individual, his executor, administrator, or other personal representative, or a corporation,

partnership, association, or any other legal or commercial entity, whether or not a citizen or domiciliary of the District of Columbia and whether or not organized under the laws of the District of Columbia. (July 29, 1970, 84 Stat. 549, Pub. L. 91-358, title I, § 132(a); 1973 Ed., § 13-421.)

Service on partnerships not altered. — The long-arm statute did not alter District law governing service on partnerships, which is that the partnership entity is never to be served but rather service must be made on all partners. *Day v. Avery*, 548 F.2d 1018 (D.C. Cir.

1976), cert. denied, 431 U.S. 908, 97 S. Ct. 1706, 52 L. Ed. 2d 394 (1977).

Cited in *Lott v. Burning Tree Club, Inc.*, 516 F. Supp. 913 (D.D.C. 1980); *Bender v. Rocky Mt. Drilling Assocs.*, 648 F. Supp. 330 (D.D.C. 1986).

§ 13-422. Personal jurisdiction based upon enduring relationship.

A District of Columbia court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, or maintaining his or its principal place of business in, the District of Columbia as to any claim for relief. (July 29, 1970, 84 Stat. 549, Pub. L. 91-358, title I, § 132(a); 1973 Ed., § 13-422.)

Application of long-arm statute. — Where plaintiff presented no facts to establish an "enduring relationship" between the District and the defendants, personal jurisdiction could only be established pursuant to the long-arm statute. *Dickson v. United States*, 831 F. Supp. 893 (D.D.C. 1993).

Corporate office for maintaining federal agency contact. — A corporation which has an office located in the District and staffed merely for the purpose of maintaining contact with agencies of the United States government is not domiciled in the District. *Norair Eng'r Assocs. v. Noland Co.*, 365 F. Supp. 740 (D.D.C. 1973).

Subsidiary of parent corporation. — This section and § 13-423 do not provide that personal jurisdiction may attach on a parent corporation merely because one of its subsidiaries is authorized to do business in the District. *Martin-Trigona v. Acton Corp.*, 600 F. Supp.

1193 (D.D.C. 1984), aff'd, 818 F.2d 95 (D.C. Cir. 1987).

Jurisdiction based on office location. — This section gave the U.S. Court of Appeals (D.C. Circuit) personal jurisdiction over the Director of the Federal Bureau of Prisons, whose office was located in the District of Columbia. *Cameron v. Thornburgh*, 983 F.2d 253 (D.C. Cir. 1993).

Cited in *Berlin Democratic Club v. Rumsfeld*, 410 F. Supp. 144 (D.D.C. 1976); *Doby v. Safeway Stores, Inc.*, 505 F. Supp. 934 (D.D.C. 1981); *First Chicago Int'l v. United Exch. Co.*, 655 F. Supp. 787 (D.D.C. 1987), modified, 836 F.2d 1375 (D.C. Cir. 1988); *Pollack v. Meese*, 737 F. Supp. 663 (D.D.C. 1990); *Lex Tex Ltd. v. Skillman*, App. D.C., 579 A.2d 244 (1990); *Guevara v. Reed*, App. D.C., 598 A.2d 1157 (1991); *Trerotola v. Cotter*, App. D.C., 601 A.2d 60 (1991).

§ 13-423. Personal jurisdiction based upon conduct.

(a) A District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's —

- (1) transacting any business in the District of Columbia;
- (2) contracting to supply services in the District of Columbia;
- (3) causing tortious injury in the District of Columbia by an act or omission in the District of Columbia;
- (4) causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives

substantial revenue from goods used or consumed, or services rendered, in the District of Columbia;

(5) having an interest in, using, or possessing real property in the District of Columbia;

(6) contracting to insure or act as surety for or on any person, property, or risk, contract, obligation, or agreement located, executed, or to be performed within the District of Columbia at the time of contracting, unless the parties otherwise provide in writing; or

(7) marital or parent and child relationship in the District of Columbia if:

(A) the plaintiff resides in the District of Columbia at the time the suit is filed;

(B) such person is personally served with process; and

(C) in the case of a claim arising from a marital relationship:

(i) the District of Columbia was the matrimonial domicile of the parties immediately prior to their separation, or

(ii) the cause of action to pay spousal support arose under the laws of the District of Columbia or under an agreement executed by the parties in the District of Columbia; or

(D) in the case of a claim affecting the parent and child relationship:

(i) the child was conceived in the District of Columbia and such person is the parent or alleged parent of the child;

(ii) the child resides in the District of Columbia as a result of the acts, directives, or approval of such person; or

(iii) such person has resided with the child in the District of Columbia.

(E) Notwithstanding the provisions of subparagraphs (A) through (D), the court may exercise personal jurisdiction if there is any basis consistent with the United States Constitution for the exercise of personal jurisdiction.

(b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him. (July 29, 1970, 84 Stat. 549, Pub. L. 91-358, title I, § 132(a); 1973 Ed., § 13-423; Mar. 10, 1983, D.C. Law 4-200, § 4, 30 DCR 125.)

- I. General Consideration.
- II. "Transacting any Business."
- III. Tortious Injury in District.
 - A. Act or Omission in District.
 - B. Act or Omission Outside District.

I. GENERAL CONSIDERATION.

Section references. — This section is referred to in § 33-742.

Legislative history of Law 4-200. — Law 4-200, the "District of Columbia Adoption of the Uniform Child Custody Jurisdiction and Marital or Parent and Child Long-Arm Jurisdiction Amendments Act of 1982," was introduced in Council and assigned Bill No. 4-237, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982,

respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-284 and transmitted to both Houses of Congress for its review.

Section was derived from the Uniform Interstate and International Procedure Act. *Gatewood v. Fiat*, 617 F.2d 820 (D.C. Cir. 1980).

Legislative intent. — Congress' overall intent in enacting this section was to provide the District's courts, to the greatest extent possible, with personal jurisdiction essentially identical to that as was then available in Maryland and

Virginia. *Margoles v. Johns*, 483 F.2d 1212 (D.C. Cir. 1973).

In enacting this section, Congress intended to provide District courts with in personam jurisdiction equivalent in scope to that in effect in the neighboring states of Maryland and Virginia. *Rose v. Silver*, App. D.C., 394 A.2d 1368 (1978).

Exercise of personal jurisdiction permitted by due process. — This section permits the exercise of personal jurisdiction over nonresident defendants to the extent permitted by the due process clause of the United States Constitution. *Environmental Research Int'l, Inc. v. Lockwood Greene Engr's, Inc.*, App. D.C., 355 A.2d 808 (1976).

Scope of defendant's activities in District. — The bases for jurisdiction enumerated in subsection (a) apply only to claims arising from conduct described therein. Where jurisdiction is sought over a defendant as to a claim that does not arise from that defendant's activities within the forum state, as allowed by § 13-422, those activities must be greater in scope before an exercise of jurisdiction over the defendant will be constitutionally permissible. *First Chicago Int'l v. United Exch. Co.*, 655 F. Supp. 787 (D.D.C. 1987), modified, 836 F.2d 1375 (D.C. Cir. 1988).

Due process requires that a nonresident defendant have certain minimum contacts with the forum so the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Meyers v. Smith*, 460 F. Supp. 621 (D.D.C. 1978).

Due process requires that a defendant: (1) Receive adequate notice of the suit; and (2) be subject to the personal jurisdiction of the court. *Smith v. Jenkins*, App. D.C., 452 A.2d 333 (1982).

In each case the trial court must assure that the defendant's contacts are such that the maintenance of the suit in the forum state does not offend "traditional notions of fair play and substantial justice." *Hummel v. Koehler*, App. D.C., 458 A.2d 1187 (1983).

There must be some act by which the nonresident defendant purposely avails himself of the privilege of conducting activities in the forum state, invoking the benefits and protections of its laws. *Meyers v. Smith*, 460 F. Supp. 621 (D.D.C. 1978).

Jurisdiction over nonresidents. — Where there is no indication that a defendant resides in the District, this statute provides the only means through which a district court may obtain personal jurisdiction over a defendant. *Dickson v. United States*, 831 F. Supp. 893 (D.D.C. 1993).

Proof of fair play and substantial justice required. — To establish jurisdiction pursuant to this section, the plaintiff must demonstrate that finding jurisdiction over the individual

defendants would not offend traditional notions of fair play and substantial justice. *Dickson v. United States*, 831 F. Supp. 893 (D.D.C. 1993).

Retroactive application of section. — This section could be applied even though a cause of action arose nearly 2 years before the effective date of this section. *Liberty Mut. Ins. Co. v. American Pecco Corp.*, 334 F. Supp. 522 (D.D.C. 1971).

Federal court would treat this section as applicable in action that was filed several months before the section took effect. *Security Bank v. Tauber*, 347 F. Supp. 511 (D.D.C. 1972).

Retroactive application of this section is justified on grounds that it merely establishes a new method of obtaining jurisdiction and effects procedural changes to secure existing substantive rights. *Liberty Mut. Ins. Co. v. American Pecco Corp.*, 334 F. Supp. 522 (D.D.C. 1971).

Factors establishing minimum contacts. — Factors bearing on the adequacy of a defendant's acts and its "minimum contacts" with the trial forum in affecting the determination of whether the forum has personal jurisdiction; include (1) the reasonableness of requiring a defendant to defend a suit in the forum where it is initiated, (2) the foreseeability of injury to the plaintiff as a result of actions — or consequences of actions — of the defendant in forum, (3) whether the defendant's activities upon which plaintiff's lawsuit is grounded caused a consequence in the forum state, (4) whether there was an act by the defendant by which it purposely availed itself of the privilege of conducting activities in the forum state, (5) whether the defendant's contacts with the forum are of a quality and nature to manifest a deliberate and voluntary association with the forum, (6) whether the defendant's contacts with the forum are related to the transaction upon which plaintiff's lawsuit is grounded, and (7) whether the defendant's contacts with the forum were such that it could reasonably anticipate being haled into court there. *Daniels v. Kanof*, 116 WLR 2053 (Super. Ct. 1988).

United States District Court is not confined by the jurisdictional limits of this section. *Brink's Inc. v. Board of Governors of Fed. Reserve Sys.*, 466 F. Supp. 116 (D.D.C. 1979).

Residency. — While paragraph (a)(7) specifically requires that the plaintiff reside in the District, that paragraph, especially in extended litigation, encompasses a movant-defendant even if he was not the original plaintiff. *Heim v. Taylor*, 118 WLR 577 (Super. Ct. 1990).

Plaintiff may maintain an action for divorce even though Superior Court has no personal jurisdiction over the defendant where the plaintiff is entitled to bring such an action by being a District of Columbia resident for at

least six months before filing his complaint. *Oler v. Oler*, 118 WLR 541 (Super. Ct. 1990).

Subject-matter jurisdiction based upon federal question. — Even though subject-matter jurisdiction was predicated upon a federal question, appellants had to rely on D.C. law to sue nonresident defendants, since no federal long-arm statute applied. *Edmond v. United States Postal Serv. Gen. Counsel*, 949 F.2d 415 (D.C. Cir. 1991).

District of Columbia courts take guidance from neighboring jurisdictions of Maryland and Virginia in the interpretation of their long-arm statute. *Mitchell Energy Corp. v. Mary Helen Coal Co.*, 524 F. Supp. 558 (D.D.C. 1981).

Fundamental fairness requires qualitative evaluations of contacts with forum. — Notions of fundamental fairness require that the defendant's contacts with the forum be evaluated qualitatively rather than quantitatively. *Mouzavires v. Baxter*, App. D.C., 434 A.2d 988 (1981), cert. denied, 455 U.S. 1006, 102 S. Ct. 1643, 71 L. Ed. 2d 875 (1982); *Reiman v. First Union Real Estate Equity & Mtg. Invs.*, 614 F. Supp. 255 (D.D.C. 1985).

Service of process necessary. — Before the Superior Court of the District may exercise personal jurisdiction over a nonresident defendant, service of process over that nonresident must be authorized by this section. *Berwyn Fuel, Inc. v. Hogan*, App. D.C., 399 A.2d 79 (1979).

Alternative method of acquiring in personam jurisdiction over nonresident motorist. — This chapter and § 40-407 are alternative, independent methods for acquiring in personam jurisdiction over a nonresident motorist. *Liberty Mut. Ins. Co. v. Burgess*, App. D.C., 308 A.2d 775 (1973).

Claim unrelated to acts forming basis for personal jurisdiction. — Defendant's conduct satisfied subsection (a)(1), but subsection (b) barred claims as unrelated to the acts forming the basis for personal jurisdiction. *Trerotola v. Cotter*, App. D.C., 601 A.2d 60 (1991).

Policeman serving as agent of county. — Where the defendant policeman was acting as an official of a Virginia county and was acting on the county's behalf in entering into the District to effect an arrest, he served as an agent of the county and subjected it to the long-arm jurisdiction of the District. *Daughtry v. Arlington County*, 490 F. Supp. 307 (D.D.C. 1980).

Coconspirators as agents for fellow conspirators. — Where overt acts in furtherance of a conspiracy are uncontroverted and at least one of such acts occurred in the District, and where the coconspirators were agents of all their fellow conspirators when acting in furtherance of conspiracy, personal jurisdiction

could be obtained over the alleged conspirators who had no direct contacts with the District by virtue of this section. *Mandelkorn v. Patrick*, 359 F. Supp. 692 (D.D.C. 1973).

Based on the principles of agency law and the long-arm statute, the federal District Court for the District of Columbia can exercise personal jurisdiction over out-of-state defendants who have no direct contacts with the District if the plaintiff alleges that an overt act in furtherance of a conspiracy was committed in the District by any member of the conspiracy, and that the resulting injury to the plaintiff occurred in the District. *Dorman v. Thornburgh*, 740 F. Supp. 875 (D.D.C. 1990), aff'd, 955 F.2d 57 (D.C. Cir. 1992).

Regulations promulgated in the District were not overt acts in furtherance of a conspiracy which was joined by other government officials outside the District by the mere fact that they later fulfilled their duties in enforcing those already-enacted regulations. Thus, plaintiffs could not assert the fiction of a conspiracy in order to establish personal jurisdiction over defendants who clearly had no contact with the District of Columbia. *Dorman v. Thornburgh*, 740 F. Supp. 875 (D.D.C. 1990), aff'd, 955 F.2d 57 (D.C. Cir. 1992).

Failure to show agency precludes jurisdiction. — The sale of tubing, used in a construction project in West Virginia, which was consummated in the District by a distributor who was not acting as the agent for the manufacturers of tubing did not give the court jurisdiction over the manufacturers in an action by buyers of the tubing against the manufacturers for damages for alleged defects in the tubing. *Norair Eng'r Assocs. v. Noland Co.*, 365 F. Supp. 740 (D.D.C. 1973).

Burden of proof is on plaintiff to show the court a basis for the assertion of long-arm jurisdiction. *Lott v. Burning Tree Club, Inc.*, 516 F. Supp. 913 (D.D.C. 1980).

A court may assert personal jurisdiction over a nonresident defendant where service of process is authorized by statute and where the service of process so authorized is consistent with due process. *Mouzavires v. Baxter*, App. D.C., 434 A.2d 988 (1981), cert. denied, 455 U.S. 1006, 102 S. Ct. 1643, 71 L. Ed. 2d 875 (1982); *Smith v. Jenkins*, App. D.C., 452 A.2d 333 (1982).

Section 13-334(a) is predecessor to this section and continues to exist as a basis for personal jurisdiction alongside this section's more comprehensive long-arm provisions. *AMAF Int'l Corp. v. Ralston Purina Co.*, App. D.C., 428 A.2d 849 (1981).

This section is not exclusive and where a foreign corporation is authorized to do business in the District and has an address at which its agent may be served, § 13-334 comes into play.

AMAF Int'l Corp. v. Ralston Purina Co., App. D.C., 428 A.2d 849 (1981).

Effect of subsection (b). — Subsection (b) bars any claims unrelated to the particular transaction carried out in the District of Columbia upon which personal jurisdiction allegedly is based: The claim itself must have arisen from the business transacted in the District or there is no jurisdiction. *Novak-Canzeri v. Turki Bin Abdul Aziz Al Saud*, 864 F. Supp. 203 (D.D.C. 1994).

Concept of cause of action or claim for relief in subsection (b) should be broadly construed to cover entire transaction so that, when possible, the entire dispute may be settled in a single litigation. *Steinberg v. International Criminal Police Org.*, 672 F.2d 927 (D.C. Cir. 1981); *Goffe v. Blake*, 605 F. Supp. 1151 (D. Del. 1985).

Acts of agent can be attributed to principal for purposes of asserting personal jurisdiction. *Goffe v. Blake*, 605 F. Supp. 1151 (D. Del. 1985).

Act or omission must be voluntary. *Tavoulareas v. Comnas*, 720 F.2d 192 (D.C. Cir. 1983).

Unilateral activity of another party or third person is not appropriate consideration when determining whether a defendant has sufficient contacts with a forum state to justify an assertion of jurisdiction. *Sol Salins, Inc. v. Sure Way Refrigerated Truck Transp. Brokers, Inc.*, App. D.C., 510 A.2d 1032 (1986).

"Continuous and persistent course of business." — The concept of a "continuous and persistent course of business" is not satisfied by an attorney/defendant's entry of an appearance as counsel in 2 or at most 3 matters over a period of 10 years or longer. *Parsons v. Mains*, App. D.C., 580 A.2d 1329 (1990).

Sufficiency of pleadings. — Conclusory statements followed by boiler-plate allegations regarding defendants' purported business contacts with the District, allegations that generally track the statutory requisites and the characterizations used by the courts in describing the kinds of activities that may suffice to establish jurisdiction, did not satisfy the requisite standards for the exercise of personal jurisdiction over defendants. *Novak-Canzeri v. Turki Bin Abdul Aziz Al Saud*, 864 F. Supp. 203 (D.D.C. 1994).

Insurer for drug manufacturer whose products are used in District. — Subsection (a)(6)'s provision for jurisdiction over any person who contracts to insure any "risk . . . within the District of Columbia at the time of contracting" extends to the insurer of a drug manufacturer, as the risk against which it insures is the risk of liability arising from the use of the drug manufacturer's products, and that this risk exists wherever its products are used including the District of Columbia. *Eli Lilly & Co. v.*

Home Ins. Co., 794 F.2d 710 (D.C. Cir. 1986), cert. denied, 479 U.S. 1060, 107 S. Ct. 940, 93 L. Ed. 2d 990 (1987).

A drug manufacturer's insurers, aware of the nationwide scope of the drug manufacturer's product distribution, cannot claim that it is somehow unforeseeable that they would be haled into court under the long-arm statute in a jurisdiction where the drug manufacturer would likely be subject to suit. *Eli Lilly & Co. v. Home Ins. Co.*, 794 F.2d 710 (D.C. Cir. 1986), cert. denied, 479 U.S. 1060, 107 S. Ct. 940, 93 L. Ed. 2d 990 (1987).

Cited in *Mosley v. Nationwide Purchasing, Inc.*, 485 F.2d 418 (D.C. Cir. 1973); *A. Tasker, Inc. v. Amsellem*, App. D.C., 315 A.2d 178 (1974); *Berlin Democratic Club v. Rumsfeld*, 410 F. Supp. 144 (D.D.C. 1976); *Textile Museum v. F. Eberstadt & Co.*, 440 F. Supp. 30 (D.D.C. 1977); *Henderson v. Snider Bros.*, App. D.C., 409 A.2d 1083 (1979), aff'd, App. D.C., 439 A.2d 481 (1981); *Doby v. Safeway Stores, Inc.*, 505 F. Supp. 934 (D.D.C. 1981); *Quinto v. Legal Times of Washington, Inc.*, 506 F. Supp. 554 (D.D.C. 1981); *Crown Oil & Wax Co. v. Safeco Ins. Co. of Am.*, App. D.C., 429 A.2d 1376 (1981); *Bennett v. Bennett*, 682 F.2d 1039 (D.C. Cir. 1982); *Halkin v. Helms*, 690 F.2d 977 (D.C. Cir. 1982); *Maritime Int'l Nominees Establishment v. Republic of Guinea*, 693 F.2d 1094 (D.C. Cir. 1982), cert. denied, 464 U.S. 815, 104 S. Ct. 71, 78 L. Ed. 2d 84 (1983); *Committee for Free Namibia v. South West Africa People's Org.*, 554 F. Supp. 722 (D.D.C. 1982); *Brown v. Brown*, 110 WLR 2177 (Super. Ct.); *Navy, Marshall & Gordon v. United States Int'l Development-Cooperation Agency*, 557 F. Supp. 484 (D.D.C. 1983); *Albergottie v. James*, App. D.C., 470 A.2d 266 (1983); *Tymshare, Inc. v. Covell*, 727 F.2d 1145 (D.C. Cir. 1984); *Beachboard v. Trustees of Columbia Univ.*, App. D.C., 475 A.2d 398 (1984); *Cardwell v. Investor's Analysis, Inc.*, 620 F. Supp. 1395 (D.D.C. 1985); *Reiman & Co. v. Eromanga Invs.*, 622 F. Supp. 13 (D.D.C. 1985); *Clarke v. Washington Metro. Area Transit Auth.*, 654 F. Supp. 712 (D.D.C. 1985), aff'd, 808 F.2d 137 (D.C. Cir. 1987); *Ausbrooks v. Ausbrooks*, App. D.C., 493 A.2d 324 (1985); *Reuber v. United States*, 787 F.2d 599 (D.C. Cir. 1986); *Bender v. Rocky Mt. Drilling Assocs.*, 648 F. Supp. 330 (D.D.C. 1986); *Allied Arab Bank Ltd. v. Hajjar*, 115 WLR 1717 (Super. Ct.); *Kapar v. Kuwait Airways Corp.*, 663 F. Supp. 1065 (D.D.C. 1987), modified, 845 F.2d 1100 (D.C. Cir. 1988); *National Bank v. Mallery*, 669 F. Supp. 22 (D.D.C. 1987); *Connors v. Marontha Coal Co.*, 670 F. Supp. 45 (D.D.C. 1987); *Rapid Rentals, Inc. v. Myers*, 115 WLR 2453 (Super. Ct.); *Trenwyth Indus., Inc. v. Burns & Russell Co.*, 701 F. Supp. 852 (D.D.C. 1988); *Avianca, Inc. v. Corriea*, 705 F. Supp. 666 (D.D.C. 1989); *Frank Emmet Real Estate, Inc. v. Monroe*, App. D.C., 562 A.2d 134 (1989); *Holt v. Holt*, 118

WLR 553 (Super. Ct. 1990); *Cole v. Kinley*, 118 WLR 1001 (Super. Ct. 1990); *Ross v. Product Dev. Corp.*, 736 F. Supp. 285 (D.D.C. 1989); *Pollack v. Meese*, 737 F. Supp. 663 (D.D.C. 1990); *Guevara v. Reed*, App. D.C., 598 A.2d 1157 (1991); *Martin v. Coca-Cola Co.*, 785 F. Supp. 3 (D.D.C. 1992); *L.A.W. v. M.E.*, App. D.C., 606 A.2d 160 (1992). —

II. "TRANSACTIONING ANY BUSINESS."

Constitutionality of subsection (a)(1). — Subsection (a)(1) is coextensive with the Constitution's due process limits. *Dooley v. United Technologies Corp.*, 786 F. Supp. 65 (D.D.C. 1992).

Subsection (a)(1) has been interpreted broadly, and its reach is limited only by due process considerations. *Rose v. Silver*, App. D.C., 394 A.2d 1368 (1978); *Meyers v. Smith*, 460 F. Supp. 621 (D.D.C. 1978).

The "transacting business" provision in subsection (a)(1) of this section is as far-reaching as the due process clause allows. *Koteen v. Bermuda Cablevision, Ltd.*, 913 F.2d 973 (D.C. Cir. 1990).

Subdivision (a)(1) of this section has been construed broadly by courts. *Dooley v. United Technologies Corp.*, 803 F. Supp. 428 (D.D.C. 1992).

Scope of subsection (a)(1). — The "transacting any business" provision embraces those contractual activities of a nonresident defendant which cause a consequence in the District. *Mouzavires v. Baxter*, App. D.C., 434 A.2d 988 (1981), cert. denied, 455 U.S. 1006, 102 S. Ct. 1643, 71 L. Ed. 2d 875 (1982); *Cockrell v. Cumberland Corp.*, App. D.C., 458 A.2d 716 (1983).

Where plaintiff is complaining about an overdraft in New York and dishonor of certain checks in Washington there is no basis on which to hold that either of the defendants purposefully directed their activities in any way towards the District, so as to confer jurisdiction over them upon this court. *First Chicago Int'l v. United Exch. Co.*, 655 F. Supp. 787 (D.D.C. 1987), modified, 836 F.2d 1375 (D.C. Cir. 1988).

The contacts of the defendants with the District, directly and through the Cafritz defendants, are held to establish jurisdiction under the "transacting business" clause. *Brown v. Artery Org., Inc.*, 654 F. Supp. 1106 (D.D.C. 1987).

The conduct of negotiating, performing, or soliciting business contracts within the District qualifies as "transacting business" for the purposes of the District's long-arm statute. *Abramson v. Wallace*, 706 F. Supp. 1 (D.D.C. 1989).

Subsection (a)(1) confers personal jurisdiction over a defendant only if the plaintiff's

claim arises from the defendant's contact with the District. *Everett v. Nissan Motor Corp. in United States*, App. D.C., 628 A.2d 106 (1993).

Nature of business. — Subsection (a)(1) of this section speaks of "transacting any business," thus defendant FBI agents were not exempt from personal jurisdiction on the theory that business contacts which can lead to personal jurisdiction under the long-arm statute only where the business is commercial in nature. *Rochon v. FBI*, 691 F. Supp. 1548 (D.D.C. 1988).

Scope of government contacts doctrine. — The government contacts doctrine does not provide a blanket exception for all governmental contacts, and it certainly does not exempt federal employees who work in the District of Columbia from personal jurisdiction in the District. *Rochon v. FBI*, 691 F. Supp. 1548 (D.D.C. 1988).

The legislative history of the long-arm statute, as well as decisions by the courts of Maryland and Virginia construing their comparable statutory provisions, compels the conclusion that the "transacting any business" provision is coextensive with the due process clause. *Mouzavires v. Baxter*, App. D.C., 434 A.2d 988 (1981), cert. denied, 455 U.S. 1006, 102 S. Ct. 1643, 71 L. Ed. 2d 875 (1982).

The "transacting business" clause of this section permits jurisdiction to the fullest extent permissible under the due process clause. *Mitchell Energy Corp. v. Mary Helen Coal Co.*, 524 F. Supp. 558 (D.D.C. 1981).

The "transacting any business" provision of the "long-arm statute" is coextensive with due process. *Smith v. Jenkins*, App. D.C., 452 A.2d 333 (1982).

The District's long-arm statute contemplates the exercise of personal jurisdiction to the fullest extent permissible under the due process clause, and has concluded that the "transacting any business" provision is coextensive with the due process clause. *Hummel v. Koehler*, App. D.C., 458 A.2d 1187 (1983).

Due process requires determination of sufficient connection to forum. — The due process analysis requires a determination as to whether there is a sufficient connection between the defendant and the forum to make it fair to require defense of the action in the forum. *Mitchell Energy Corp. v. Mary Helen Coal Co.*, 524 F. Supp. 558 (D.D.C. 1981).

Claims must arise from transaction providing basis for jurisdiction. — This section requires some affirmative act by which a defendant brings itself within the jurisdiction and establishes minimum contacts, and jurisdiction is limited to claims arising from the particular transaction of business which provides the basis for jurisdiction. *Cohane v. Arpeja-California, Inc.*, App. D.C., 385 A.2d 153, cert. denied, 439 U.S. 980, 99 S. Ct. 567, 58 L. Ed. 2d 651 (1978);

Berwyn Fuel, Inc. v. Hogan, App. D.C., 399 A.2d 79 (1979); *LaBrier v. A.H. Robins Co.*, 551 F. Supp. 53 (D.D.C. 1982).

For subsection (a)(1) of this section to be the basis for the exercise of in personam jurisdiction, the plaintiff must demonstrate not only that the defendants have transacted business in the District, but also that claims pursued by the plaintiff arose out of the business transacted in the District. *Naartex Consulting Corp. v. Watt*, 542 F. Supp. 1196 (D.D.C. 1982), aff'd, 722 F.2d 779 (D.C. Cir. 1983), cert. denied, 467 U.S. 1210, 104 S. Ct. 2399, 81 L. Ed. 2d 355 (1984).

Jurisdiction of the court is restricted to claims arising from the particular transaction of business carried out in the District. *Goffe v. Blake*, 605 F. Supp. 1151 (D. Del. 1985).

The defendant's conduct and connection with the forum state must be such that he should reasonably anticipate being haled into court there. *Chase v. Pan-Pacific Broadcasting, Inc.*, 617 F. Supp. 1414 (D.D.C. 1985).

The seminal requirement under this section is that a company must undertake some affirmative act by which the defendant brings itself within the jurisdiction and established minimum contact. *Everett v. Nissan Motor Corp. in United States*, App. D.C., 628 A.2d 106 (1993).

And defendant's transaction of business with others in District irrelevant. — The fact that defendant may have transacted business with other customers in the District of Columbia is of no help to plaintiff, for his claim must arise from the particular transaction on which he relies as a basis for jurisdiction. *Cockrell v. Cumberland Corp.*, App. D.C., 458 A.2d 716 (1983).

But may also address activities outside District. — The limitations in this section that a claim for relief must arise from the transaction of business in the District is meant to prevent the assertion of claims that do not bear some relationship to the acts relied upon to confer jurisdiction, but once a claim is related to acts in the District, this section does not require that the scope of the claim be limited to activity within the District. *Cohane v. Arpeja-California, Inc.*, App. D.C., 385 A.2d 153, cert. denied, 439 U.S. 980, 99 S. Ct. 567, 58 L. Ed. 2d 651 (1978).

Transacting business is only one factor to be considered in the exercise of personal jurisdiction. *Everett v. Nissan Motor Corp. in United States*, App. D.C., 628 A.2d 106 (1993).

Activity required. — For an entity to be transacting business within the District, some purposeful, affirmative activity within the District is required. *Bueno v. La Compania Peruana de Radiodifusion, S.A.*, App. D.C., 375 A.2d 6 (1977).

"Some affirmative act" by the defendant to

bring himself within the court's jurisdiction and to establish "minimum contacts" is necessary to meet the "transacting any business" subsection of the District of Columbia's long-arm statute. *Hummel v. Koehler*, App. D.C., 458 A.2d 1187 (1983).

Regularly doing any kind of business or engaging in any kind of persistent course of conduct within the District will subject a defendant to jurisdiction. *Security Bank, N.A. v. Tauber*, 347 F. Supp. 511 (D.D.C. 1972).

Contacts need not be directly related to injury. — This section does not require that the contacts required for jurisdiction have a direct relationship to the act or failure to act which caused the injury. *Aiken v. Lustine Chevrolet, Inc.*, 392 F. Supp. 883 (D.D.C. 1975).

Both act and effect must occur in District. — In order for a District of Columbia court to exercise personal jurisdiction pursuant to paragraphs (1) and (3) of subsection (a) of this section, both the act and the effect must take place in District. *Mandelkorn v. Patrick*, 359 F. Supp. 692 (D.D.C. 1973).

Under subsection (a)(1), both the act and its effect must occur in the District of Columbia. *Trager v. Wallace Berrie & Co.*, 593 F. Supp. 223 (D.D.C. 1984).

Defendants transacting business through agent. — Where an attorney was hired by a foreign corporation and its president and sent to the District of Columbia to establish an office, negotiate on behalf of the corporation with the federal Food and Drug Administration and if necessary litigate against the FDA, the corporation and its president were transacting business in the District through an agent and accordingly had established the minimum contacts necessary for personal jurisdiction over them consistent with due process. *Rose v. Silver*, App. D.C., 394 A.2d 1368 (1978).

"Minimum contacts" requirement satisfied where overseas corporation knew that it was selling its cranes to an American distributor who did business in the District. *Liberty Mut. Ins. Co. v. American Pecco Corp.*, 334 F. Supp. 522 (D.D.C. 1971).

Discussions, conferences and meetings conducted within District by nonresident corporation constitute such minimal contacts with District that maintenance of an action for breach of contract does not offend traditional notions of fair play and substantial justice. *Unidex Systems Corp. v. Butz Eng'r Corp.*, 406 F. Supp. 899 (D.D.C. 1976).

Where defendant visited the District of Columbia on business-related matters to obtain plaintiffs' assistance, was present in District on several occasions, and derived economic benefit from his employment of plaintiffs, there was an ample basis for the finding that defendant transacted business in the District of Columbia for purposes of invoking jurisdiction over him

under subsection (a)(1) of this section. *Hummel v. Koehler*, App. D.C., 458 A.2d 1187 (1983).

The fact that I-270 in Maryland connects with the District of Columbia and affects the commuting of many District residents was not contact to confer jurisdiction over the administrator of the state highway association of the state of Maryland. *Coalition on Sensible Transp. Inc. v. Dole*, 631 F. Supp. 1382 (D.D.C. 1986).

Where a contract was signed in the District of Columbia, attendant meetings were held in District of Columbia to negotiate and facilitate that contract, and one of the terms provided for deposits into a "lock box" provided by a District of Columbia bank, both the requirements of this section and due process considerations are satisfied by the exercise of in personam jurisdiction over the parties. *Clements Distrib. Co. v. Celebrity Prods., Inc.*, 669 F. Supp. 322 (D.D.C. 1988).

Where 3% of sales occur in the District, this constitutes substantial revenue and justifies jurisdiction under the D.C. long-arm statute. *Masterson-Cook v. Criss Bros. Iron Works*, 722 F. Supp. 810 (D.D.C. 1989).

District resident made requisite prima facie showing of injury within the District for purposes of establishing jurisdiction over defendant New York publishers of alleged defamatory letter despite fact that publication did not occur within the District. *Crane v. New York Zoological Soc'y*, 894 F.2d 454 (D.C. Cir. 1990).

Defendants' alleged actions were sufficient to establish minimum contacts where they purposefully availed themselves of the forum by deliberately bringing another party into an international racketeering conspiracy, where they obtained the benefits of an affiliation with a legitimate Washington, D.C.-based business, and where their actions, in part, caused others to become embroiled in the litigation; it is not unreasonable for foreign defendants to be called to defend themselves on an action which relates to a conspiracy that they successfully fostered in this forum. *Dooley v. United Technologies Corp.*, 803 F. Supp. 428 (D.D.C. 1992).

Where a foreign business had some sales and at least one customer in the District of Columbia to whom it sold products these contacts were sufficient to satisfy the "transacting business" clause of the long-arm statute. *Rhee Bros. v. Seoul Shik Poom, Inc.*, 869 F. Supp. 31 (D.D.C. 1994).

Rationale for the government contacts exception has its source in the unique character of the District as seat of national government and in the correlative need for unfettered access to federal departments and agencies for the entire national citizenry. *Environmental Research Int'l, Inc. v. Lockwood Greene Eng'rs, Inc.*, App. D.C., 355 A.2d 808 (1976).

Meeting with federal officials concerning fed-

eral funding of I-270 in Maryland is within the government contacts exception and did not confer jurisdiction over the administrator of the state highway association of the state of Maryland. *Coalition on Sensible Transp. Inc. v. Dole*, 631 F. Supp. 1382 (D.D.C. 1986).

The "government contacts" doctrine is an outgrowth of the First Amendment right to petition the federal government, and it insulates those persons whose only contact with the District of Columbia is such a petition. *Rochon v. FBI*, 691 F. Supp. 1548 (D.D.C. 1988).

Exception based on First Amendment. — In view of the "transacting any business" standard in this section, the government contacts principle, which exempts one from assertions of personal jurisdiction in the District if the sole contact with the District consists of dealing with a federal instrumentality, is now based solely upon the First Amendment whenever the asserted contacts are covered by the long-arm statute and are sufficient to withstand a traditional due process attack. *Rose v. Silver*, App. D.C., 394 A.2d 1368 (1978).

Subpoenas. — Receipt of a subpoena is not acceptance of a contract in the context of transacting business as contemplated by subsection (a)(1). A subpoena commands a person to appear in court but does not by itself offer terms of a "contract." The plaintiff cannot hale the prosecutor into this jurisdiction merely by opening his own mail. *Sindram v. Relin*, 116 WLR 2093 (Super. Ct. 1988).

Appearance before government agency not basis for personal jurisdiction. — Personal appearances before government agency in an attempt to influence government action qualified as exercises in petitioning the government and could not form basis for personal jurisdiction. *Naartex Consulting Corp. v. Watt*, 722 F.2d 779 (D.C. Cir. 1983), cert. denied, 467 U.S. 1210, 104 S. Ct. 2399, 81 L. Ed. 2d 355 (1984).

Activity subject to government contacts exception. — Filings by bank and its affiliates with the Securities and Exchange Commission and the mutual fund distributor's application for membership in the National Association of Securities Dealers in connection with their plan to sponsor a mutual fund fall within the federal "government contact principle" rule, and must be excluded from any calculation of intrajurisdictional activity in determining the defendants' amenability to suit in the District. *Investment Co. Inst. v. United States*, 550 F. Supp. 1213 (D.D.C. 1982).

Bank's continuing relationships with such governmental or quasi-governmental entities as the Veterans' Administration, Federal Housing Administration, Federal National Mortgage Association, et al., — integral parts of the nation's mortgage banking system — cannot be regarded as "contacts" with the District of Co-

lumbia merely because those agencies are located in Washington. *Investment Co. Inst. v. United States*, 550 F. Supp. 1213 (D.D.C. 1982).

Failure to allege relationship of defendant's conduct to its contacts with District barred long-arm jurisdiction. — Where plaintiff did not allege that the conduct of the manufacturer of an intrauterine contraceptive device which gave rise to her injury was related to its contacts with the District of Columbia, United States District Court for District of Columbia could not assert long-arm jurisdiction pursuant to the section. *LaBrier v. A.H. Robins Co.*, 551 F. Supp. 53 (D.D.C. 1982).

All persons doing business with District corporation not subject to personal jurisdiction. — Despite the broad reach of this section, not every person who does business with a District of Columbia corporation is subject to in personam jurisdiction under its provisions. *Mitchell Energy Corp. v. Mary Helen Coal Co.*, 524 F. Supp. 558 (D.D.C. 1981).

Activity entitling defendant to protection of local law is an indication that the "transacting any business" criterion is satisfied. *Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distribs. Pty., Ltd.*, 647 F.2d 200 (D.C. Cir. 1981).

Single act may constitute "transacting business." — A single act in the jurisdiction by defendant, under some circumstances, may be sufficient to constitute "transacting business," and thereby confer jurisdiction. *Mitchell Energy Corp. v. Mary Helen Coal Co.*, 524 F. Supp. 558 (D.D.C. 1981).

But single contacts with jurisdiction which are insignificant in scheme of parties' dealings will not support jurisdiction. *Mitchell Energy Corp. v. Mary Helen Coal Co.*, 524 F. Supp. 558 (D.D.C. 1981).

"Transacting any business" also applies to tort actions. — The "transacting any business" prong of this section is not restricted only to contract actions but may also be applied to tort actions. *McDaniel v. Armstrong World Indus.*, 603 F. Supp. 1337 (D.D.C. 1985).

Fiduciary shield doctrine inapplicable. — The fiduciary shield doctrine, that when an individual acts in a fiduciary capacity for the corporation, he is shielded from exposure to personal jurisdiction, does not apply to paragraph (1) of subsection (a). *Chase v. Pan-Pacific Broadcasting, Inc.*, 617 F. Supp. 1414 (D.D.C. 1985); *Katradis v. Dav-El of Wash.*, 702 F.Supp. 1 (D.D.C. 1987).

Subsidiary of parent corporation. — Section 13-422 and this section do not provide that personal jurisdiction may attach on a parent corporation merely because one of its subsidiaries is authorized to do business in the District. *Martin-Trigona v. Acton Corp.*, 600 F. Supp. 1193 (D.D.C. 1984), *aff'd*, 818 F.2d 95 (D.C. Cir. 1987).

Officers and employees of a corporation.

— A court does not have jurisdiction over individual officers and employees of a corporation just because the court has jurisdiction over the corporation. Personal jurisdiction over the employees or officers of a corporation in their individual capacities must be based on their personal contacts with the forum and not their acts and contacts carried out solely in a corporate capacity. *Wiggins v. Equifax, Inc.*, 853 F. Supp. 500 (D.D.C. 1994).

Jurisdiction may be based solely on continuous and systematic contacts. — Even in the absence of connections between the subject matter of the controversy and the forum state, jurisdiction may be based solely on a nonresident defendant's continuous and systematic general business contacts with the forum. *Mizlou Television Network v. NBC*, 603 F. Supp. 677 (D.D.C. 1984).

Minimum contacts must exist between defendant and forum. — An out-of-state defendant may be haled into court only if there exist certain minimum contacts between the defendant and the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Mizlou Television Network v. NBC*, 603 F. Supp. 677 (D.D.C. 1984).

The critical issue is whether the foreign corporation had certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Hughes v. A.H. Robins Co.*, App. D.C., 490 A.2d 1140 (1985).

Mere newsgathering not "doing business." — Foreign newspaper corporation which maintains an office and news correspondents in the District for the gathering of news is not "doing business" under this section. *Margoles v. Johns*, 333 F. Supp. 942 (D.D.C. 1971), *aff'd*, 483 F.2d 1212 (D.C. Cir. 1973).

Nor is it soliciting business or persistent course of conduct. — For purposes of subjecting a news organization to personal jurisdiction for acts or omissions outside the District under paragraph (4) of subsection (a) of this section, the mere act of newsgathering in the District is not to be considered as doing or soliciting business or engaging in a persistent course of conduct as those terms are used in paragraph (4). *Akbar v. New York Magazine Co.*, 490 F. Supp. 60 (D.D.C. 1980).

Newsgathering exception not applicable to distributor. — Distributor which engaged in the distribution of magazines outside the area of their immediate circulation and which did not engage in newsgathering activities in the District of Columbia cannot assert protection of newsgathering exception to assertion of jurisdiction over it. *Founding Church of Scientology v. Verlag*, 536 F.2d 429 (D.C. Cir. 1976).

Listing in District phone directory not transacting business. — Where defendant's sole contact with the District is the listing of an address and telephone number in the District of Columbia telephone directory, where such directory shows the address to be in Arlington, Virginia, defendant was not "transacting any business" within District so as to be amenable to jurisdiction. *Cornwell v. C.I.T. Corp.*, 373 F. Supp. 661 (D.D.C. 1974).

Neither is delivery of duplicate contract executed elsewhere. — Where Peruvian corporation did not initiate or pursue contract negotiations in the District, no services were to be provided by it in the District, and sole contact which it had within jurisdiction was the delivery, by courier, from Peru to the District of duplicate original contract executed by it in Peru, such act of delivery, even when coupled with subsequent conduct of courier in accepting payment and later returning it, is insufficient to subject corporation to personal jurisdiction in the District. *Bueno v. La Compania Peruana de Radiodifusion, S.A.*, App. D.C., 375 A.2d 6 (1977).

But call between parties in District is. — A phone conversation which acted as a ratification of an agent's contract made between two parties physically present in the District of Columbia is sufficient, within meaning of this section's "transacting business" test, to invoke jurisdiction. *Dorothy K. Winston & Co. v. Town Heights Dev., Inc.*, 376 F. Supp. 1214 (D.D.C. 1974).

Telephone calls. — Phone call in which the defendant prosecuting attorney solicited plaintiff's presence in New York for the limited purpose of proceeding with a criminal matter in which the plaintiff does not fall within the context of "transacting business" as construed by subsection (a)(1). *Sindram v. Relin*, 116 WLR 2093 (Super. Ct. 1988).

Subcontractors. — Where the primary contractor hired by the state highway association of the state of Maryland hired subcontractors in the District it did not confer jurisdiction over the administrator of the state highway association. *Coalition on Sensible Transp. Inc. v. Dole*, 631 F. Supp. 1382 (D.D.C. 1986).

Contacts at time suit filed not required. — It is sufficient for purposes of due process that the suit was based on a contact which had substantial connection with the forum; there is no requirement that there be contacts at the time the suit is filed. *McDaniel v. Armstrong World Indus.*, 603 F. Supp. 1337 (D.D.C. 1985).

Plaintiff's writing of check on District bank is both too remote and too trivial to be regarded as a consequence of any contractual activity by defendant. *Cockrell v. Cumberland Corp.*, App. D.C., 458 A.2d 716 (1983).

Nonresident defendant need not have been physically present in District to fall within the purview of subsection (a)(1) of this section. *Mouzavires v. Baxter*, App. D.C., 434 A.2d 988 (1981), cert. denied, 455 U.S. 1006, 102 S. Ct. 1643, 71 L. Ed. 2d 875 (1982).

Maryland physician licensed to practice in D.C. — Where D.C. resident was referred to a Maryland physician by a friend, the fact that the physician was licensed to practice in D.C. but did not and is listed in the D.C. Yellow Pages did not bring him within the long-arm statute for malpractice action. *Ghanem v. Kay*, 624 F. Supp. 23 (D.D.C. 1984).

Solely being licensed to practice medicine in the District of Columbia is insufficient as a basis for the D.C. Superior Court to exercise personal jurisdiction over defendant doctor. *Colclough v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, 121 WLR 189 (Super. Ct. 1992).

Residence in District of 1 party to agreement. — Absent some indication that an agreement was signed or negotiated in the District of Columbia, the fact that 1 party to the agreement is a resident of the District is an insufficient basis for asserting jurisdiction over the other. *Willis v. Willis*, 655 F.2d 1333 (D.C. Cir. 1981).

Nonresident availing self of benefits of doing business. — North Carolina resident who purposely availed himself of the benefits of doing business with law firm in the District, was subject to the jurisdiction of the District courts to adjudicate an action to collect disputed fees that arises from such contacts. *Fisher v. Bander*, App. D.C., 519 A.2d 162 (1986).

Nonresident shipping goods to intermediary for distribution in District. — When the "transacting any business" language of subsection (a) of this section is read to extend to the limits of due process, it encompasses a case where a nonresident defendant ships goods to an intermediary with the expectation that the intermediary will distribute the goods in a region that includes the District of Columbia. *Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distribs. Pty., Ltd.*, 647 F.2d 200 (D.C. Cir. 1981).

Foreign automobile manufacturer associated with District subject to antitrust suit in District. — Foreign automobile manufacturer had affirmatively and purposely associated itself with District of Columbia in its business ventures such that it would not offend due process for it to be subject to antitrust suit in the District. *Chrysler Corp. v. GMC*, 589 F. Supp. 1182 (D.D.C. 1984).

Soliciting business. — The listing of a toll-free phone number in the D.C. directory and the placing of an ad in a national cruise and travel magazine is not sufficient to confer

jurisdiction over a Florida travel agency in the U.S. District Court for the District of Columbia. *Blair v. Norwegian Caribbean Lines*, 622 F. Supp. 21 (D.D.C. 1985).

California corporation's distribution of copies of Chinese newspapers in District of Columbia is sufficient to authorize personal jurisdiction over the corporation under subsection (a)(1) on a claim for relief related to defendant's transaction of business in the District of Columbia. *Bingzhang v. Renmin Ribao*, 114 WLR 1545 (Super. Ct. 1986).

Foreign franchisor or licensor may be subject to suit in District concerning those aspects of the local franchisee's business in respect to which it has taken some significant action but not to those aspects in which it has played no part. *International Limousine Serv., Inc. v. W.B. Johnson Properties, Inc.*, 114 WLR 1689 (Super. Ct. 1986).

Trade associations. — Membership in a trade association is not the equivalent of "transacting business" within the meaning of the long-arm statute and attendance at a trade association meeting, even by an officer of the trade association does not constitute "transacting business." *American Ass'n of Cruise Passengers v. Cunard Line*, 691 F. Supp. 379 (D.D.C. 1987).

Claim for personal injury sustained in suburban department store owned by Michigan corporation could not be said to "arise from" corporation's advertising in District for purposes of confessing jurisdiction over the corporation under this section, even though such advertising could be sufficient to satisfy the "transacting business" requirement of subsection (a)(1). *Bayles v. K-Mart Corp.*, 636 F. Supp. 852 (D.D.C. 1986).

Retention of local counsel to defend suit. — The fact that defendants retained local counsel for the purpose of defending case did not constitute doing business in the District of Columbia. *Staton v. Looney*, 704 F. Supp. 303 (D.D.C. 1989).

Physical presence of defendant in District. — A defendant's physical presence in the District of Columbia is not necessary to "transact business" in the District of Columbia for purposes of long-arm jurisdiction. *FDIC v. O'Donnell*, 136 Bankr. 585 (D.D.C. 1991).

Attorney discipline proceedings. — Where attorney chose to practice law in the District of Columbia, and where it was the government which chose to permit its attorneys to be licensed in jurisdictions other than where they practice, it was concluded that whatever harm resulted from a disciplinary proceeding outside the District did not devolve from defendant Chief Disciplinary Counsel of the Supreme Court of New Mexico's actions, and the U.S. District Court therefore did not have personal jurisdiction over the defendant. *United*

States v. Ferrara, 847 F. Supp. 964 (D.D.C. 1993).

Sending a letter to District. — Sending a letter into this jurisdiction is not an act sufficient to warrant the exercise of long-arm jurisdiction under subsection (a)(3) of this section. *Hayhurst v. Calabrese*, 782 F. Supp. 643 (D.D.C.), *aff'd sub nom. Hayhurst v. Bradley*, 980 F.2d 734 (8th Cir. 1992).

Telephone calls and mailings. — Telephone calls and mailings to Washington, D.C. constitute "transacting business" under subsection (a)(1). *Dooley v. United Technologies Corp.*, 786 F. Supp. 65 (D.D.C. 1992).

Contacts exempt under government contacts doctrine. — Contacts could not form the basis for the exercise of personal jurisdiction in this forum because they were exempted under the government contacts doctrine. *Dooley v. United Technologies Corp.*, 786 F. Supp. 65 (D.D.C. 1992).

Conspiracy theory. — The conspiracy theory is an extension of the jurisdiction conferred upon a court by the enactment of a long-arm statute, where the actions of coconspirators acting as agents within the forum are attributed to coconspirators outside the forum. *Dooley v. United Technologies Corp.*, 786 F. Supp. 65 (D.D.C. 1992).

The requirement of injury within the forum stems from the underlying long-arm provision, not from the application of the conspiracy theory. *Dooley v. United Technologies Corp.*, 786 F. Supp. 65 (D.D.C. 1992).

Contacts related to claim insufficient to establish personal jurisdiction. — See *Naartex Consulting Corp. v. Watt*, 722 F.2d 779 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1210, 104 S. Ct. 2399, 81 L. Ed. 2d 355 (1984).

Where plaintiff failed to make a *prima facie* showing that defendant purposefully established minimum contacts with the District or that it participated in a conspiracy in the District to defraud plaintiff, the District did not have personal jurisdiction over defendants. *First Chicago Int'l v. United Exch. Co.*, 836 F.2d 1375 (D.C. Cir. 1988).

Contacts sufficient to satisfy jurisdictional prerequisites. — In an action by a black FBI agent against other FBI agents stemming from racial harassment, there was personal jurisdiction over individual defendants employed at FBI headquarters because: (1) Through their affirmative association with an enterprise located in the District of Columbia, they have "purposefully availed themselves of the privilege of conducting activities within the District of Columbia, thus invoking the benefits and protections of its laws, and creating the reasonable anticipation of being hauled into court here because of their activities, and; (2) the business these defendants transact in the District of Columbia — their employment with

the FBI — is directly tied to the acts charged in the complaint. *Rochon v. FBI*, 691 F. Supp. 1548 (D.D.C. 1988).

A foreign corporation and its president, who retained the services of a District of Columbia law firm, had the minimum degree of contact with the District necessary for the United States District Court for the District of Columbia to exercise personal jurisdiction over them in a fee dispute suit arising from that contact. *Koteen v. Bermuda Cablevision, Ltd.*, 913 F.2d 973 (D.C. Cir. 1990).

Defendant that contracted with plaintiff to insure and reimburse her for expenses she would incur as a result of her obligation to pay for bills of a District of Columbia hospital for medical services authorized by defendant was within reach of the District's long-arm statute. *Hissong v. Exclusive Healthcare, Inc.*, 121 WLR 877 (Super. Ct. 1992).

In conducting business meetings in the District of Columbia, in sending and receiving mail, telefaxes, and phone calls to and from the District, and in holding out District-based counsel as its representative in business matters, it is clear that foreign defendants were transacting business in the District. *Dooley v. United Technologies Corp.*, 803 F. Supp. 428 (D.D.C. 1992).

Contacts insufficient to satisfy jurisdictional prerequisites. — Where undisputed affidavits submitted by private defendants established that their only contacts with the District were the maintenance of a governmental affairs office and limited personal and written communication with Interior Department officials concerning challenged exchanges, such contacts were insufficient to satisfy the jurisdictional prerequisites of subsection (a)(1). *National Coal Ass'n v. Clark*, 603 F. Supp. 668 (D.D.C. 1984).

Where all of the alleged acts at issue occurred other than in the District of Columbia, there was an inadequate basis to support long-arm jurisdiction, although it was undisputed that plaintiff had transacted some business in the District. *Appel v. Southeastern Employers Serv. Corp.*, 605 F. Supp. 74 (D.D.C. 1985).

Contacts proffered by plaintiff did not satisfy the District of Columbia long-arm statute, where such contact consisted entirely of sporadic attendance at trade association meetings held in the District of Columbia and the communications between defendant committee member who was also president of a regional chapter outside the District of Columbia in his representative capacity, while in his home state and the national office of the trade association in the District of Columbia and there was no indication in the record that these visits or communications were related in any way to plaintiff. *American Ass'n of Cruise Passengers v. Cunard Line*, 691 F. Supp. 379 (D.D.C. 1987).

The defendant's placing of a long distance phone call requesting the plaintiff to appear in a pending criminal action in which plaintiff is the complainant and the defendant is the prosecuting attorney does not constitute a deliberate and voluntary association with the forum from which defendant should reasonably anticipate being haled into court, the defendant's conduct did not consist of purposefully availing himself of the privilege of conducting business in the forum state, the defendant does not have sufficient contacts with the District of Columbia for the purpose of maintaining this action and exercising personal jurisdiction over the defendant would violate due process. *Sindram v. Relin*, 116 WLR 2093 (Super. Ct. 1988).

Bald speculations that defendants are alleged coconspirators do not constitute the threshold showing necessary to carry the burden of establishing personal jurisdiction. *Hasenfus v. Corporate Air Servs.*, 700 F. Supp. 58 (D.D.C. 1988).

The sending of an allegedly defamatory letter is insufficient to establish an act occurring within Washington, D.C. *Edmond v. United States Postal Serv.*, 727 F. Supp. 7 (D.D.C. 1989), rev'd on other grounds, 949 F.2d 415 (1991).

Where plaintiff alleged that overt act in furtherance of conspiracy occurred in District of Columbia, where defendants made decision to create a single unit to handle Cuban detainees at release center in Texas, act was insufficient basis for U.S. District Court to exercise personal jurisdiction pursuant to this section because plaintiff's purported injury was his assignment to unit, which occurred in Texas. *Delgado v. Federal Bureau of Prisons*, 727 F. Supp. 24 (D.D.C. 1989).

There was no agency relationship or any policy or pattern of conduct on which to predicate a finding that a doctor in Maryland, through referrals from nurses in Washington, D.C., was transacting business in the District of Columbia. *Colclough v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, 121 WLR 189 (Super. Ct. 1992).

In a medical malpractice case, there was no factual basis for exercising personal jurisdiction over defendant where there was no factual showing, by affidavit, proffer or otherwise, that defendant personally rendered medical services in the District of Columbia sufficient to constitute transacting business under subdivision (a)(1) of this section, or that he had caused tortious injury in the District by an act or omission outside of the District while he was regularly doing business in the District, while he engaged in any other persistent course of conduct in the District, or while he derived substantial revenue from services rendered in the District. *Colclough v. Kaiser Found. Health*

Plan of Mid-Atlantic States, Inc., 121 WLR 189 (Super. Ct. 1992).

Automobile manufacturer's distribution of automobiles in a "region" that includes the District of Columbia is not sufficient to demonstrate jurisdiction over the manufacturer in the District of Columbia itself. *Everett v. Nissan Motor Corp. in United States*, App. D.C., 628 A.2d 106 (1993).

New York attorneys did not intend to transact business in the District of Columbia when they complied with a bank's request to have certain documents mailed to an embassy and to the bank's counsel in the District of Columbia. *Bank of Cape Verde v. Bronson*, 869 F. Supp. 21 (D.D.C. 1994).

Limitations on government contacts doctrine. — The government contacts doctrine, which precludes the assertion of personal jurisdiction over a nonresident entering the District of Columbia if the only contact the nonresident has with the District is with Congress or a federal agency, does not apply where (1) the cause of action arises from a professional relationship between a former client and the attorney who had represented the client before a federal agency, (2) the minimum contacts with the District are limited to contacts between the client and the attorney and do not include contacts between the client or attorney and the federal agency, and (3) the agency does not restrict representation before the agency to members of the District of Columbia bar. *Chase v. Pan-Pacific Broadcasting, Inc.*, 617 F. Supp. 1414 (D.D.C. 1985).

The government contacts exception to the exercise of personal jurisdiction over nonresidents does not apply where the defendant's contacts with the government themselves constitute the alleged culpable or liability-generating conduct for which the plaintiff seeks to recover. *Lex Tex Ltd. v. Skillman*, App. D.C., 579 A.2d 244 (1990).

A "government contacts" principle did not make out-of-state attorney representing an out-of-state client before the United States suit in the District where the cause of action arose directly out of the performance of such representation. *Lex Tex Ltd. v. Skillman*, App. D.C., 579 A.2d 244 (1990).

See *Quetel Corp. v. Columbia Communications Int'l, Inc.*, 779 F. Supp. 183 (D.D.C. 1991); *FDIC v. O'Donnell*, 136 Bankr. 585 (D.D.C. 1991); *Trerotola v. Cotter*, App. D.C., 601 A.2d 60 (1991).

Evidence insufficient to establish minimum contacts with District. — See *Willis v. Willis*, 655 F.2d 1333 (D.C. Cir. 1981).

III. TORTIOUS INJURY IN DISTRICT.

A. Act or Omission in District.

Requirements for acquisition of jurisdiction. — To acquire jurisdiction under para-

graph (3) of subsection (a) of this section, 2 requirements must be met: (1) A tortious injury within the District caused by (2) defendant's act or omission within the District. *Akbar v. New York Magazine Co.*, 490 F. Supp. 60 (D.D.C. 1980).

Locus of injury for individual suffering at home. — In distinguishing between the act or omission which produces the injury and the injury itself, the court has found the locus of injury for an individual suffering peculiarly at home, to be her home. *Materson-Cook v. Criss Bros. Iron Works*, 722 F. Supp. 810 (D.D.C. 1989).

Act separate from injury. — Paragraph (3) of subsection (a) of this section clearly separates an act from tortious injury. *Margoles v. Johns*, 333 F. Supp. 942 (D.D.C. 1971), *aff'd*, 483 F.2d 1212 (D.C. Cir. 1973).

Distinction between injury and pecuniary loss. — This section distinguishes between the injury suffered and any pecuniary loss, which is merely a measure of such an injury. *Aiken v. Lustine Chevrolet, Inc.*, 392 F. Supp. 883 (D.D.C. 1975).

Where plaintiff purchased and consumed laxative in Arizona, suffered reaction there and was treated there, she cannot maintain action against manufacturer in the District because both the tortious act and the injury occurred in Arizona, and the plaintiff's alleged injuries in the District are actually descriptions of pecuniary losses, which are measures of such injuries. *Leaks v. Ex-Lax, Inc.*, 424 F. Supp. 413 (D.D.C. 1976).

District's interest satisfies due process. — The requirement that the injury must have occurred in the District recognizes the District's interest in preventing defective products from crossing its borders and causing injury on its roads, or in its work places or dwellings, and thus satisfies the due process clause of the United States Constitution. *Gatewood v. Fiat*, 617 F.2d 820 (D.C. Cir. 1980).

Telephone calls to District not acts within District. — Two telephone calls made from Wisconsin to the District of Columbia do not constitute acts in the District within the meaning of paragraph (3) of subsection (a) of this section. *Margoles v. Johns*, 333 F. Supp. 942 (D.D.C. 1971), *aff'd*, 483 F.2d 1212 (D.C. Cir. 1973).

Two telephone calls made in Florida by defendant into the District do not provide a jurisdictional basis, even if fraudulent misrepresentations were made by defendant during those conversations, because these calls from Florida were the act of the defendant in Florida, and not "an act or omission in the District of Columbia." *Security Bank, N.A. v. Tauber*, 347 F. Supp. 511 (D.D.C. 1972).

Making a telephone call to the District from outside the District and causing the occurrence

of actual physical events in the District does not project into the District the presence of the person making the telephone call, and no personal jurisdiction could be asserted. *Margoles v. Johns*, 483 F.2d 1212 (D.C. Cir. 1973).

Defendant's utterance of defamatory statements in the course of telephone communications between him in Massachusetts and New York and individuals within the District do not amount to tortious acts within the District of Columbia necessary to satisfy the requirements of subsection (a)(3). *Tavoulareas v. Comnas*, 720 F.2d 192 (D.C. Cir. 1983).

Reporting or processing checks in District. — Theory that tortious acts occurred in the District whenever an allegedly bad check was written on or was deposited in an account would subject a nonresident defendant to jurisdiction in any state in which its checks were deposited or from which checks were sent to it and would run against the grain of the minimum contacts doctrine. *First Chicago Int'l v. United Exch. Co.*, 655 F. Supp. 787 (D.D.C. 1987), modified, 836 F.2d 1375 (D.C. Cir. 1988).

Mailing newspaper into District. — The mailing of subscription copies of the newspaper containing libeling article into the District of Columbia is not the type of act contemplated under subsection (a)(3). *Moncreif v. Lexington Herald-Leader Co.*, 631 F. Supp. 772 (D.D.C. 1985), aff'd, 807 F.2d 217 (D.C. Cir. 1986).

Where newspaper in another jurisdiction printed an allegedly libelous article which was mailed into the District and caused injury there, court could not exercise jurisdiction, as act or omission causing injury did not occur in the District. *Moncreif v. Lexington Herald-Leader Co.*, 807 F.2d 217 (D.C. Cir. 1986).

Defamation as injury. — An "injury" to the professional standing of foreign diplomats, temporarily residing in the Washington metropolitan area and having their principal place of business in the District, caused by a defamation constitutes an injury "in the District of Columbia" for the purposes of this section. *Akbar v. New York Magazine Co.*, 490 F. Supp. 60 (D.D.C. 1980).

Where defendants disseminated an allegedly defamatory letter only to a narrow class of people in Maryland, the mere fact that this letter ultimately found its way to a publication which published excerpts in the District, is not an "act" within the District and is far too attenuated a contact to justify the District's exercise of in personam jurisdiction over the defendants under subsection (a)(3). *Reuber v. United States*, 750 F.2d 1039 (D.C. Cir. 1984).

Allegedly defamatory statements made pursuant to subpoena, are not voluntary and do not qualify as an act or omission. *Tavoulareas v. Comnas*, 720 F.2d 192 (D.C. Cir. 1983).

Where an Arlington County (Virginia) policeman entered into the District to effect an arrest, the policeman's acts fell within the ambit of paragraph (3) of subsection (a) of this section. *Daughtry v. Arlington County*, 490 F. Supp. 307 (D.D.C. 1980).

Involuntary admission to District hospital. — Where defendants brought plaintiff into the District against his will and he was involuntarily admitted to a District hospital during another defendant's tenure as its administrator, these allegations provided a sufficient basis for a federal court's exercise of jurisdiction over the defendants. *Logiurato v. Action*, 490 F. Supp. 84 (D.D.C. 1980).

B. Act or Omission Outside District.

Requirements for acquisition of jurisdiction. — To acquire jurisdiction under paragraph (4) of subsection (a) of this section, 3 requirements must be met: (1) A tortious injury within the District caused by (2) defendant's act or omission outside the District (3) if defendants had 1 of the "minimum contacts" with the District enumerated in the paragraph. *Akbar v. New York Magazine Co.*, 490 F. Supp. 60 (D.D.C. 1980).

To acquire jurisdiction under paragraph (4) of subsection (a), there must be (1) a tortious injury within the District of Columbia which was caused by (2) defendants' acts or omissions outside the District of Columbia, (3) if the defendants have 1 of the 3 specified "minimum contacts" within the District of Columbia. These "minimum contacts" are regularly doing or soliciting business within the District of Columbia; engaging in any other persistent course of conduct within the District of Columbia; or deriving substantial revenue from goods used or consumed, or services rendered, in the District of Columbia. *Trager v. Wallace Berrie & Co.*, 593 F. Supp. 223 (D.D.C. 1984).

Plus factor. — Under subsection (a)(4), the act outside/impact inside the forum is the basis for drawing the case into the court, but because the harm-generating act (or omission) occurred outside, the statute calls for something more. The "something more" or "plus factor" does not itself supply the basis for the assertion of jurisdiction, but it does serve to filter out cases in which the in-forum impact is an isolated event and the defendant otherwise has no, or scant, affiliations with the forum. *Crane v. Carr*, 814 F.2d 758 (D.C. Cir. 1987).

Under subsection (a)(4), the business done or persistent course of conduct "plus factor" is satisfied by connections considerably less substantial than those it takes to establish general, all-purpose "doing business"- or "presence"-based jurisdiction. *Crane v. Carr*, 814 F.2d 758 (D.C. Cir. 1987).

This section gives the court personal jurisdiction

tion over a claim arising from an act that occurs outside the District but causes an injury inside the District, provided the alleged tortfeasor can show another "plus factor" that demonstrates activity in the District; but the statute calls for an injury inside the District before plus factors even become relevant. *Gandel v. Telemundo Group, Inc.*, 997 F.2d 1561 (D.C. Cir. 1993).

Injury need not be related to contact with District. — One who invokes paragraph (4) of subsection (a) of this section need not show that the injury in the District was directly related to the actual business solicitation, course of conduct, or derivation of revenue. *Gatewood v. Fiat*, 617 F.2d 820 (D.C. Cir. 1980).

But claim must arise from injury occurring in District. — Where jurisdiction is based on paragraph (4) of subsection (a) of this section, subsection (b) of this section requires only that the claim for relief arise out of an injury occurring in the District. *Gatewood v. Fiat*, 617 F.2d 820 (D.C. Cir. 1980).

Court lacked jurisdiction over accident case arising in Maryland even though plaintiff moved into the District prior to filing suit, received medical treatment in the District for injuries sustained in the accident, and even though defendant commuted daily from Maryland to the District. *Jeanchares v. Harley*, 113 WLR 337 (Super. Ct. 1985).

Contacts should be continuing in character. — The minimum contacts with the District necessary to allow a District court to exercise personal jurisdiction under paragraph (4) of subsection (a) of this section should at least be continuing in character. *Security Bank, N.A. v. Tauber*, 347 F. Supp. 511 (D.D.C. 1972).

Strength of contact with jurisdiction must be weighed along with continuity of contact in evaluating applicability of this section. *Security Bank, N.A. v. Tauber*, 347 F. Supp. 511 (D.D.C. 1972).

Contacts sufficient for jurisdiction. — Contacts of an attorney with the District, including being a member of the District of Columbia Bar and a member of a District law firm, are sufficient for the assertion of jurisdiction over him under this section. *Meyers v. Smith*, 460 F. Supp. 621 (D.D.C. 1978).

Defendant drug store was subject to the jurisdiction of the court where the defendant's more than 25 stores exist in northern Virginia, and a majority are less than five miles from the District of Columbia and the drug store not only advertises in the District of Columbia for customers through both newspapers published in the District and in the District of Columbia "Yellow Pages", but has calculatedly and purposely used in its advertising listings, telephone book listings and store displays terminology which makes it indistinguishable from the stores of a Maryland corporation which owns and operates 35 retail drug stores within

the District of Columbia. *Daniels v. Kanof*, 116 WLR 2053 (Super. Ct. 1988).

Contacts held insufficient. — Where search warrant was issued in the Eastern District of Pennsylvania; defendant was a resident of the Commonwealth of Virginia; employed in Arlington, Virginia; the injuries to the plaintiff all occurred either in Pennsylvania or in Florida; and, there was no indication that defendant subjected himself to the benefits of the District of Columbia law, or that he was present in the District of Columbia during the injury to the plaintiff, the court had no personal jurisdiction over the defendant. *Moskovits v. Drug Enforcement Admin.*, 774 F. Supp. 649 (D.D.C. 1991).

Goods need not be sold in District. — Paragraph (4) of subsection (a) of this section does not require that the goods be sold in the District of Columbia. *Gatewood v. Fiat*, 617 F.2d 820 (D.C. Cir. 1980).

Knowledge that product will be used in District. — A foreign manufacturer will be subject to personal jurisdiction where it has either actual knowledge or an alternative basis for imputing knowledge that its product will be used in the District. *Liberty Mut. Ins. Co. v. American Pecco Corp.*, 334 F. Supp. 522 (D.D.C. 1971).

Telephone contacts with or receipt of mail from the District did not constitute the "persistent course of conduct" subsection (a)(4) requires. *Reuber v. United States*, 750 F.2d 1039 (D.C. Cir. 1984), *aff'd*, 787 F.2d 599 (D.C. Cir. 1986).

"Derives substantial revenue" construed. — All that is required for personal jurisdiction under the "derives substantial revenue" language of paragraph (4) of subsection (a) of this section is that the manufacturer derive substantial revenue from the production and sale of goods and that the goods be used in the District. *Liberty Mut. Ins. Co. v. American Pecco Corp.*, 334 F. Supp. 522 (D.D.C. 1971).

The "substantial revenue" test may be satisfied, even when the amount of locally derived revenue is small in absolute and percentage terms, if that revenue exceeds the state's per capita share of substantial nationally derived revenue. *Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distribs. Pty., Ltd.*, 647 F.2d 200 (D.C. Cir. 1981).

"Substantial revenue" means enough revenue to indicate a commercial impact in the forum such that a defendant fairly could have expected to be hauled into court there, and it is incorrect to equate the idea of commercial impact on the forum with the narrower concept of financial gain or loss in the forum. *Delahanty v. Hinckley*, 686 F. Supp. 920 (D.D.C. 1986), *aff'd*, 900 F.2d 368 (D.C. Cir. 1990).

"Substantial revenue" found. — Magazine distributor with sales in the District repre-

senting approximately 1 percent of its gross revenues, has, on the basis of income derived from the District, reasonable connection with the District so that the District Court can assert jurisdiction over the distributor. *Founding Church of Scientology v. Verlag*, 536 F.2d 429 (D.C. Cir. 1976).

Where a newspaper's average total annual sales in the District represents approximately .7% of its total sales, this constitutes substantial revenue within the meaning of paragraph (4) of subsection (a) of this section and it does not offend traditional notions of fair play and substantial justice to subject the publishing company to jurisdiction before District courts. *Akbar v. New York Magazine Co.*, 490 F. Supp. 60 (D.D.C. 1980).

Sufficient minimum contacts existed, as evidenced by the application of the substantial revenue provision of the long-arm statute, to support the exercise of the court's jurisdiction over the defendants. *Delahanty v. Hinckley*, 686 F. Supp. 920 (D.D.C. 1986), *aff'd*, 900 F.2d 368 (D.C. Cir. 1990).

Where manufacturer advertised that eight out of ten tow trucks with winches used its winches, this prevalence of its winches constituted a "commercial impact" on the District sufficient to meet the substantial revenue test. *Fogle v. Ramsey Winch Co.*, 774 F. Supp. 19 (D.D.C. 1991).

Causing injury to American citizens abroad would be insufficient to satisfy the requirements of this section. *Upton v. Empire of Iran*, 459 F. Supp. 264 (D.D.C. 1978), *aff'd*, 607 F.2d 494 (D.C. Cir. 1979).

The district court lacked personal jurisdiction over three tort defendants in a tortious interference with contract claim, and erred in failing to dismiss the claims against them for that threshold reason. *Gandel v. Telemundo Group, Inc.*, 997 F.2d 1561 (D.C. Cir. 1993).

Loss of earnings in District did not establish jurisdiction. — Where decedent's right to sue would have arisen from his injuries in a car accident in Maryland, loss of future earnings in the District of Columbia was simply

a measure of his damages, and not a basis for establishing long-arm jurisdiction over defendants. *Perry v. Criss Bros. Iron Works*, 741 F. Supp. 985 (D.D.C. 1990).

Conspiracy. — Plaintiff failed to establish jurisdiction under subsection (a)(4) against defendant sued in his individual capacity who was alleged to be part of a conspiracy that caused injury to the plaintiff in the District of Columbia where the alleged co-conspirators contested their role in any conspiracy and there were no allegations of substantial acts by one of the co-conspirators within the jurisdiction in furtherance of the claimed conspiracy. *American Ass'n of Cruise Passengers v. Cunard Line*, 691 F. Supp. 379 (D.D.C. 1987).

Newsgathering in District. — The "newsgathering exception" to subsection (a)(4) provides that "the mere collection of news material here for use in subsequent publication elsewhere ... is not a doing of business here, within the meaning of the statute." *Moncreif v. Lexington Herald-Leader Co.*, 807 F.2d 217 (D.C. Cir. 1986).

The newsgathering exception to subsection (a)(4) is not based upon first amendment considerations but is based upon an interpretation of Congress' intent with respect to what type of "business" in the District will subject a non-resident corporation to jurisdiction here. *Moncreif v. Lexington Herald-Leader Co.*, 807 F.2d 217 (D.C. Cir. 1986).

Jurisdiction could not be exercised by court where only alleged "persistent course of conduct" by the newspaper in the District was the maintenance of an office for newsgathering. *Moncreif v. Lexington Herald-Leader Co.*, 807 F.2d 217 (D.C. Cir. 1986).

Newsgathering in the District of Columbia is not regularly doing business or soliciting business so as to confer jurisdiction under subsection (a)(4) in a libel action for mailing subscription copies of a newspaper into the District containing libeling article. *Moncreif v. Lexington Herald-Leader Co.*, 631 F. Supp. 772 (D.D.C. 1985), *aff'd*, 807 F.2d 217 (D.C. Cir. 1986).

§ 13-424. Service outside the District of Columbia.

When the exercise of personal jurisdiction is authorized by this subchapter, service may be made outside the District of Columbia. (July 29, 1970, 84 Stat. 549, Pub. L. 91-358, title I, § 132(a); 1973 Ed., § 13-424.)

Service must be authorized by statute and satisfy due process. — In order for a court properly to assert personal jurisdiction over a nonresident defendant, service of process on the nonresident must be both authorized by statute and within the limits set by the due process clause of the United States Constitu-

tion. *Lott v. Burning Tree Club, Inc.*, 516 F. Supp. 913 (D.D.C. 1980).

Cited in *Reiman v. First Union Real Estate Equity & Mtg. Invs.*, 614 F. Supp. 255 (D.D.C. 1985); *Allied Arab Bank Ltd. v. Hajjar*, 115 WLR 1717 (Super. Ct. 1987); *Abramson v. Wallace*, 706 F. Supp. 1 (D.D.C. 1989); *Frank*

Emmet Real Estate, Inc. v. Monroe, App. D.C., 562 A.2d 134 (1989); FDIC v. O'Donnell, 136 Bankr. 585 (D.D.C. 1991).

§ 13-425. Inconvenient forum.

When any District of Columbia court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss such civil action in whole or in part on any conditions that may be just. (July 29, 1970, 84 Stat. 549, Pub. L. 91-358, title I, § 132(a); 1973 Ed., § 13-425.)

Purpose of doctrine. — One of the purposes of the forum non conveniens doctrine is to prevent forum shopping. *Colclough v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, 121 WLR 189 (Super. Ct. 1992).

One of the purposes of the forum non conveniens doctrine is the avoidance of saddling courts with the burden of construing the law of a foreign jurisdiction. *Colclough v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, 121 WLR 189 (Super. Ct. 1992).

Section inapplicable to federal courts. — Reference to "any District of Columbia court" in this section does not include federal courts in the District of Columbia. *Founding Church of Scientology v. Verlag*, 536 F.2d 429 (D.C. Cir. 1976).

Plaintiff's choice of forum should rarely be disturbed unless the balance is strongly in favor of the defendant. *Cohane v. Arpeja-California, Inc.*, App. D.C., 385 A.2d 153, cert. denied, 439 U.S. 980, 99 S. Ct. 567, 58 L. Ed. 2d 651 (1978); *Mobley v. Southern Ry.*, App. D.C., 418 A.2d 1044 (1980); *Crown Oil & Wax Co. v. Safeco Ins. Co. of Am.*, App. D.C., 429 A.2d 1376 (1981).

Especially if plaintiff is District resident. — Only under convincing circumstances should a trial court dismiss on grounds of forum non conveniens a suit brought by a resident of the District. *Washington v. May Dep't Stores*, App. D.C., 388 A.2d 484 (1978).

But plaintiff's status not always determinative. — A plaintiff's status as a resident of the District of Columbia is an important factor in determining the propriety of the forum but would not necessarily preclude dismissal of his suit on forum non conveniens grounds. *Washington v. May Dep't Stores*, App. D.C., 388 A.2d 484 (1978).

Determinative factors. — In considering motion to dismiss on basis of forum non conveniens, question of whether the District of Columbia is the best forum for the litigation is not the issue; rather, court must determine whether the District has so little to do with the case that its courts should decline to hear it. *Jenkins v. Smith*, App. D.C., 535 A.2d 1367 (1987).

Essential predicate to invocation of the doctrine forum non conveniens is the availability of an alternate forum. *Mobley v. Southern Ry.*, App. D.C., 418 A.2d 1044 (1980).

Questions of forum non conveniens are committed to sound discretion of trial court and will be reversed on appeal only upon a clear showing of an abuse of discretion. *Cohane v. Arpeja-California, Inc.*, App. D.C., 385 A.2d 153, cert. denied, 439 U.S. 980, 99 S. Ct. 567, 58 L. Ed. 2d 651 (1978); *Mobley v. Southern Ry.*, App. D.C., 418 A.2d 1044 (1980); *Beard v. South Main Bank*, App. D.C., 615 A.2d 203 (1992).

A decision to dismiss on a forum non conveniens motion is entrusted to discretion of trial court and a dismissal will not be reversed on appeal except for a clear abuse of discretion. *District-Realty Title Ins. Corp. v. Goodrich*, App. D.C., 328 A.2d 93 (1974).

The trial court is afforded broad discretion in determining whether to dismiss a suit on forum non conveniens grounds once it evaluates the private and public interest factors traditionally associated with the doctrine. *Smith v. Kaiser Found. Health Plan of the Mid-Atlantic States, Inc.*, 118 WLR 2105 (Super. Ct. 1990).

Availability of alternative forum. — An overriding requirement for the application of forum non conveniens is the availability of an alternative forum. *Guevara v. Reed*, App. D.C., 598 A.2d 1157 (1991).

Defendant has burden of proof in motion to dismiss for forum non conveniens. *Crown Oil & Wax Co. v. Safeco Ins. Co. of Am.*, App. D.C., 429 A.2d 1376 (1981).

The defendant bears a heavy burden in seeking dismissal on the ground of forum non conveniens, and unless the balance is strongly in favor of the defendant, the plaintiff's choice of a forum should be given deference. *Forgoston v. Shea*, App. D.C., 491 A.2d 523 (1985).

Burden of proving inconvenient forum where neither party resides in District. — Where it is shown that neither party resides in the District and the plaintiff's claim has arisen in another jurisdiction which has more substantial contacts with the cause of action, the

burden normally allocated to the defendant to demonstrate why dismissal is warranted for forum non conveniens rests instead upon the plaintiff to show why it is not. *Mills v. Aetna Fire Underwriters Ins. Co.*, App. D.C., 511 A.2d 8 (1986).

Where neither party was a resident of the District of Columbia the burden normally allocated to the defendant to demonstrate why dismissal was warranted for forum non conveniens rested instead upon the plaintiff to show why it was not. *District of Columbia ex rel. Blackwell v. Jackson*, 119 WLR 609 (Super. Ct. 1991).

Where plaintiff is non-resident. — Substantially less deference is accorded to the plaintiff's choice of forum when the plaintiff resides in another jurisdiction, for it is much less reasonable to assume under such circumstances that the District of Columbia was selected because it is a convenient forum. *Kaiser Found. Health Plan of Mid-Atlantic States, Inc. v. Rose*, App. D.C., 583 A.2d 156 (1990).

Mere pendency of litigation elsewhere does not bar suit in District. — The availability of another forum and the pendency of litigation in another jurisdiction are among the proper factors for the court to consider in determining whether to dismiss a plaintiff's lawsuit on the grounds of forum non conveniens, but the mere pendency of litigation elsewhere does not bar suit in the District of Columbia. *Sartori v. Society of Am. Military Eng'rs*, App. D.C., 499 A.2d 883 (1985).

Private and public considerations in assessing motion to dismiss. — Two separate interests must be considered in assessing a motion to dismiss for forum non conveniens: The private interest of the litigant, and the public interest. Factors relevant to the private interest concern the ease, expedition, and expense of the trial, and include the relative ease of access to proof, availability and cost of compulsory process, the enforceability of a judgment once obtained, evidence of an attempt by the plaintiff to vex or harass the defendant by his choice of the forum, and other obstacles to a fair trial. Factors related to the public interest include administrative difficulties caused by local court dockets congested with foreign litigation, the imposition of jury duty on a community having no relationship to the litigation, and the inappropriateness of requiring local courts to interpret the laws of another jurisdiction. *Crown Oil & Wax Co. v. Safeco Ins. Co. of Am.*, App. D.C., 429 A.2d 1376 (1981); *Allied Arab Bank Ltd. v. Hajjar*, 115 WLR 1717 (Super. Ct. 1987).

In ruling on a motion to dismiss for forum non conveniens, a trial court must consider both the private interests of the litigant and the public interest. *Forgoston v. Shea*, App. D.C.,

491 A.2d 523 (1985); *Jenkins v. Smith*, App. D.C., 535 A.2d 1367 (1987).

Determination of forum non conveniens is subject to an independent evaluation by the Court of Appeals of private and public interests; either the private or the public interest may be dispositive when the parties and the court have not already expended time and effort preparing for trial. *Sartori v. Society of Am. Military Eng'rs*, App. D.C., 499 A.2d 883 (1985).

Case should not be dismissed in midtrial on grounds of forum non conveniens where neither public nor private interests are thereby served. *Cohane v. Arpeja-California, Inc.*, App. D.C., 385 A.2d 153, cert. denied, 439 U.S. 980, 99 S. Ct. 567, 58 L. Ed. 2d 651 (1978); *Sartori v. Society of Am. Military Eng'rs*, App. D.C., 499 A.2d 883 (1985).

The decision to grant or deny a motion to dismiss on the ground of forum non conveniens is committed to the sound discretion of the trial court and will not be overturned absent a clear abuse of discretion. *Forgoston v. Shea*, App. D.C., 491 A.2d 523 (1985).

The decision whether to grant a dismissal for forum non conveniens is committed to the sound discretion of the trial court. *Allied Arab Bank Ltd. v. Hajjar*, 115 WLR 1717 (Super. Ct. 1987).

Denial of motion to dismiss based on doctrine of forum non conveniens is appealable order. *Crown Oil & Wax Co. v. Safeco Ins. Co. of Am.*, App. D.C., 429 A.2d 1376 (1981).

An order denying a motion to dismiss on the ground of forum non conveniens is immediately appealable. *Beard v. South Main Bank*, App. D.C., 615 A.2d 203 (1992).

Motion to dismiss granted. — In a motion to dismiss by defendant on forum non conveniens principles, where at the time the plaintiff filed the subject medical malpractice claim he was a resident of the State of Maryland, but at the time of the alleged negligent act or omission, he was a resident of the District of Columbia, the defendant's motion was granted, as the public interest factors weighed more heavily than the private interest factors. *Colclough v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, 121 WLR 189 (Super. Ct. 1992).

"Private interests" considered in assessing motion to dismiss separate maintenance complaint. — One of the "private interests" that should be considered in determining whether a motion to dismiss a complaint seeking separate maintenance for forum non conveniens should be granted, is the enforceability of a judgment once obtained which factor weighs heavily against granting the forum non conveniens motion in a case where the ex-husband has a history of failure to make court-ordered payments to support his children and the ex-husband's principal source

of income comes from the District. *Creamer v. Creamer*, App. D.C., 482 A.2d 346 (1984).

Use of conditional dismissal is available to trial court as means of checking forum shopping by plaintiffs who, through their own actions or inactions, render an alternative forum unavailable; the device obviates the need for extensive inquiry into the alternative forum's law regarding limitation of actions since, if the courts in the alternative forum refuse to accept the defendant's waiver of all statute of limitations defenses, the plaintiff is still ensured a forum by the conditional nature of the dismissal. *Mills v. Aetna Fire Underwriters Ins. Co.*, App. D.C., 511 A.2d 8 (1986).

Dismissal appealable. — A dismissal on the ground of forum non conveniens is appealable. *Forgoston v. Shea*, App. D.C., 491 A.2d 523 (1985).

District of Columbia forum upheld. — The District is not a forum non conveniens to defendant automobile dealer which conducts sales activity within District and is located in nearby suburb. *Aiken v. Lustine Chevrolet, Inc.*, 392 F. Supp. 883 (D.D.C. 1975).

It was error for the trial court to decline jurisdiction on the basis of forum non conveniens in an action for damages for a libelous publication in the District where both the plaintiff and defendant distributor were residents of the United States, merely because the magazine in question had been written and published in West Germany. *Founding Church of Scientology v. Verlag*, 536 F.2d 429 (D.C. Cir. 1976).

The District is not an inconvenient forum where plaintiff is a District corporation, the cause of action apparently arose in the District, and was executed in the District. *Florida Educ. Ass'n v. National Educ. Ass'n*, App. D.C., 354 A.2d 853 (1976).

Suit was of local interest where it arose from an incident in Maryland but the plaintiff was a resident of the District of Columbia and the defendant, though a foreign corporation, had long operated its stores in the District, and the public interest was served best by conducting the suit in the District since even though Maryland law would govern the tortious conduct which allegedly occurred there, the legal issues involved were not complex, the District courts were sufficiently acquainted with Maryland tort law, the defendant's witnesses, though Maryland residents, were all employees of its stores and there was no evidence that the plaintiff had brought suit in the District for purposes of harassment. *Washington v. May Dep't Stores*, App. D.C., 388 A.2d 484 (1978).

By reason of the levy of attachment, at least some limited jurisdiction may constitutionally be asserted by courts relating to an entirely foreign controversy between the parties, and the trial court abused its discretion in dismiss-

ing the complaint on grounds of forum non conveniens because it had jurisdiction to simply stay the action pending completion of litigation in Europe. *Barclays Bank v. Tsakos*, App. D.C., 543 A.2d 802 (1988).

District held inconvenient forum. — The Superior Court did not abuse its discretion in granting a motion to dismiss on grounds of forum non conveniens where the plaintiff's cause of action for alleged false arrest and wrongful detention arose in Maryland and the defendant was plainly subject to service of process in Maryland. *Pitts v. Woodward & Lothrop*, App. D.C., 327 A.2d 816 (1974), cert. denied, 420 U.S. 911, 95 S. Ct. 832, 42 L. Ed. 2d 841 (1975).

The District was not the proper forum for a class action by Maryland homeowners against a title insurance company which did business in Maryland, seeking damages for overcharges paid to Maryland lawyers, on the ground that such charges were neither filed with nor approved by the Maryland Insurance Commissioner, in light of fact that a judgment in District Court would not be binding upon either Maryland courts or the Maryland Insurance Commissioner. *District-Realty Title Ins. Corp. v. Goodrich*, App. D.C., 328 A.2d 93 (1974).

Dismissal, on the ground of forum non conveniens, was proper where the alleged tortious conduct occurred in Maryland, defendant physicians resided in Maryland and were licensed to practice medicine in Maryland, a defendant professional corporation composed of such physicians was a Maryland corporation and the owner of the Maryland hemodialysis center where plaintiff was treated was a Delaware corporation qualified to do business exclusively in Maryland. *Carr v. Bio-Medical Applications of Washington, Inc.*, App. D.C., 366 A.2d 1089 (1976).

The trial court properly dismissed an action for child support on ground of forum non conveniens where both parties were residents of Maryland, the children resided in Maryland and attended school in Maryland and Virginia, and the only significant contact of either party with the District of Columbia was that the divorced father was employed there. *Haynes v. Carr*, App. D.C., 379 A.2d 1178 (1977).

See *Henderson v. Washington*, 120 WLR 713 (Super. Ct. 1992).

Case was dismissed on forum non conveniens grounds where, in contrast to the extensive contacts with Virginia, the only link to the District of Columbia was that the corporate defendants were incorporated in the District. *Smith v. Kaiser Found. Health Plan of the Mid-Atlantic States, Inc.*, 118 WLR 2105 (Super. Ct. 1990).

The time and expense of defendant traveling 40 miles during rush hour, taking 3 hours, was sufficient to support dismissal on grounds of

forum non conveniens, where the defendant's only connection with the District was through the ownership of real property. *District of Columbia ex rel. Blackwell v. Jackson*, 119 WLR 609 (Super. Ct. 1991).

District was not proper forum for wrongful death action alleging medical malpractice where the plaintiff, the doctors, and the medical records were all located in Virginia, Virginia law would have likely applied if the case had been tried in the District, and to permit the suit to be tried in the District would have permitted forum shopping in that plaintiff would have been allowed to avoid the limits which Virginia places on recovery in Virginia medical malpractice actions. *Kaiser Found. Health Plan of Mid-Atlantic States, Inc. v. Rose*, App. D.C., 583 A.2d 156 (1990).

Where Virginia law governed, Virginia was more closely "linked" to the subject dispute, and as plaintiffs were Virginia residents at all relevant times, a medical malpractice suit against a District hospital was dismissed on forum non conveniens grounds. *Bailey v. President & Dirs.*

of Georgetown College, 121 WLR 861 (Super. Ct. 1992).

Court lacked personal jurisdiction where company was a Delaware corporation with its place of business in Montgomery County, Maryland; it had no facilities in the District of Columbia; it sold the product in Maryland; and dealer, who signed the sales contract, gave a Michigan address. *DeLawder v. Keystone Ins. Co.*, 122 WLR 493 (Super. Ct. 1994).

Cited in *Dorati v. Dorati*, App. D.C., 342 A.2d 18 (1975); *Ramamurti v. Rolls-Royce, Ltd.*, 454 F. Supp. 407 (D.D.C. 1978), *aff'd*, 612 F.2d 587 (D.C. Cir. 1980); *Bernay v. Sales*, App. D.C., 435 A.2d 398 (1981); *Pickert v. Cambridge Sav. Bank*, 618 F. Supp. 286 (D.D.C. 1985); *Matthews v. Automated Bus. Sys. & Servs., Inc.*, App. D.C., 558 A.2d 1175 (1989); *Lex Tex Ltd. v. Skillman*, App. D.C., 579 A.2d 244 (1990); *Herskovitz v. Garmong*, App. D.C., 609 A.2d 1128 (1992); *Robinson v. Roberts*, 122 WLR 521 (Super. Ct. 1994); *Ussery v. Kaiser Found. Health Plan of Mid-Atl. States, Inc.*, App. D.C., 647 A.2d 778 (1994).

Subchapter III. Service Outside the District of Columbia.

§ 13-431. Manner and proof of service.

(a) When the law of the District of Columbia authorizes service outside the District of Columbia, the service, when reasonably calculated to give actual notice, may be made —

(1) by personal delivery in the manner prescribed for service within the District of Columbia;

(2) in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction;

(3) by any form of mail addressed to the person to be served and requiring a signed receipt; or

(4) as directed by the foreign authority in response to a letter rogatory.

(b) Proof of service outside the District of Columbia may be made by affidavit of the individual who made the service or in the manner prescribed by the law of the District of Columbia, the order pursuant to which the service is made, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction. When service is made by mail, proof of service shall include a receipt signed by the addressee or other evidence of personal delivery to the addressee satisfactory to the court. (July 29, 1970, 84 Stat. 549, Pub. L. 91-358, title I, § 132(a); 1973 Ed., § 13-431.)

Service must be authorized by statute and satisfy due process. — In order for a court properly to assert personal jurisdiction over a nonresident defendant, service of process on the nonresident must be both authorized by statute and within the limits set by the due

process clause of the United States Constitution. *Lott v. Burning Tree Club, Inc.*, 516 F. Supp. 913 (D.D.C. 1980).

Method of service on foreign government valid. — In action brought by a District resident against the government of Brazil for

damages allegedly resulting from the construction of Brazilian embassy, service of summons and complaint upon the government of Brazil by registered mail delivered to the Ministry of External Relations in Brazilia, and by registered mail delivered to the Brazilian embassy in the District of Columbia, were reasonably calculated to provide adequate notice of the

action and both methods of service were valid. *Renchard v. Humphreys & Harding, Inc.*, 59 F.R.D. 530 (D.D.C. 1973).

Cited in *Liberty Mut. Ins. Co. v. American Pecco Corp.*, 334 F. Supp. 522 (D.D.C. 1971); *Frank Emmet Real Estate, Inc. v. Monroe*, App. D.C., 562 A.2d 134 (1989).

§ 13-432. Individuals eligible to make service.

Service outside the District of Columbia may be made by an individual who is permitted to make service of process under the law of the District of Columbia or under the law of the place in which the service is made or who is designated by a District of Columbia court. (July 29, 1970, 84 Stat. 550, Pub. L. 91-358, title I, § 132(a); 1973 Ed., § 13-432.)

§ 13-433. Individuals to be served; special cases.

When the law of the District of Columbia requires that in order to effect service one or more designated individuals be served, service outside the District of Columbia under this article must be made upon such designated individual or individuals. (July 29, 1970, 84 Stat. 550, Pub. L. 91-358, title I, § 132(a); 1973 Ed., § 13-433.)

§ 13-434. Assistance to tribunals and litigants outside the District of Columbia.

(a) A District of Columbia court may order service upon any person who is domiciled or can be found within the District of Columbia of any document issued in connection with a proceeding in a tribunal outside the District of Columbia. The order may be made upon application of any interested person or in response to a letter rogatory issued by a tribunal outside the District of Columbia and shall direct the manner of service.

(b) Service in connection with a proceeding in a tribunal outside the District of Columbia may be made within the District of Columbia without an order of court.

(c) Service under this section does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside the District of Columbia. (July 29, 1970, 84 Stat. 550, Pub. L. 91-358, title I, § 132(a); 1973 Ed., § 13-434.)

Cited in *Barclays Bank v. Tsakos*, App. D.C., 543 A.2d 802 (1988); *Frank Emmet Real Es-*

tate, Inc. v. Monroe, App. D.C., 562 A.2d 134 (1989).

CHAPTER 5. COUNTERCLAIMS.

Sec.

13-501. Counterclaim by way of set-off as an action by defendant.

13-502. Effect of assignment.

13-503. Action against principal and sureties.

Sec.

13-504. Action by trustee.

13-505. Action by or against executor or administrator.

§ 13-501. Counterclaim by way of set-off as an action by defendant.

In a civil action, a defendant who files a counterclaim by way of set-off shall be deemed to have brought an action at the time of filing the counterclaim for the matters mentioned therein. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1; 1973 Ed., § 13-501.)

Cited in *J.H. Marshall & Assocs. v. Burleson*, App. D.C., 313 A.2d 587 (1973); *Kelly Adjustment Co. v. Boyd*, App. D.C., 342 A.2d 361 (1975).

§ 13-502. Effect of assignment.

When cross-demands have existed between persons under such circumstances that if one had brought an action against the other a counterclaim could have been pleaded, neither can be deprived of the benefit thereof by an assignment by the other; but in an action by the assignee of a nonnegotiable debt the defendant may set off by counterclaim any indebtedness to him of the assignor, existing before notice of the assignment, as well as any indebtedness to him of the plaintiff. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1; 1973 Ed., § 13-502.)

Unlitigated tort liability not "indebtedness." — This section does not authorize counterclaim in form of cause of action in tort for unliquidated damages against assignee of tortfeasor, and so long as a contingent liability in tort is unlitigated it is not yet an "indebtedness" within meaning of this section. *Yellowitz v. J.H. Marshall & Assocs.*, App. D.C., 284 A.2d 665 (1971).

Showing necessary that assignment accepted subject to claims against assignor. — Claim of debtor against physician for abuse

of process is not a proper counterclaim in action by physician's assignee to recover for services rendered by physician, in absence of any showing that assignee accepted assignment of money claimed subject to existing claims that the debtor had against assignor at time of assignment. *Yellowitz v. J.H. Marshall & Assocs.*, App. D.C., 284 A.2d 665 (1971).

Cited in *J.H. Marshall & Assocs. v. Burleson*, App. D.C., 313 A.2d 587 (1973); *Kelly Adjustment Co. v. Boyd*, App. D.C., 342 A.2d 361 (1975).

§ 13-503. Action against principal and sureties.

In an action against principal and sureties, an indebtedness of the plaintiff to the principal may be set off by counterclaim as if he were the sole defendant. When the indebtedness so set off exceeds the plaintiff's demand, the judgment for the excess shall be in favor of the defendant who is sued as principal. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1; 1973 Ed., § 13-503.)

§ 13-504. Action by trustee.

When the plaintiff in a civil action is trustee for another, or has no actual interest in the contract on which the action is founded, a demand against the plaintiff may not be pleaded by way of counterclaim, but a demand against the person whom he represents or for whose benefit the action is brought may be pleaded. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1; 1973 Ed., § 13-504.)

§ 13-505. Action by or against executor or administrator.

In an action against an executor or administrator, in his representative capacity, the defendant may plead, by way of counterclaim, a demand belonging to the decedent where he would have been entitled to rely upon the demand in an action against him; and in an action brought by an executor or administrator, in his representative capacity, a demand against the decedent, belonging at the time of his death to the defendant, may be pleaded by way of counterclaim, as if the action had been brought by the decedent in his lifetime. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1; 1973 Ed., § 13-505.)

CHAPTER 7. TRIAL.

Sec.

13-701. [Repealed].

13-702. [Repealed].

§ 13-701. Special juries in District Court.

Repealed. Mar. 27, 1968, 82 Stat. 62, Pub. L. 90-274, § 103(a).

§ 13-702. Jury trials in civil cases in Court of General Sessions.

Repealed. July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 142(5)(A).

TITLE 14. PROOF.

Chapter

1. Evidence Generally; Depositions..... §§ 14-101 to 14-104.
3. Competency of Witnesses..... §§ 14-301 to 14-309.
5. Documentary Evidence..... §§ 14-501 to 14-507.
7. Absence for Seven Years..... §§ 14-701 to 14-702.

CHAPTER 1. EVIDENCE GENERALLY; DEPOSITIONS.

Sec.	Sec.
14-101. Evidence under oath; affirmation in lieu of oath; perjury.	14-103. Depositions for use in State and Territorial Courts.
14-102. Impeachment of witnesses.	14-104. Testimony of nonresident witnesses for use in Superior Court.

§ 14-101. Evidence under oath; affirmation in lieu of oath; perjury.

(a) All evidence shall be given under oath according to the forms of the common law.

(b) A witness who has conscientious scruples against taking an oath, may, in lieu thereof, solemnly, sincerely, and truly declare and affirm. Where an application, statement, or declaration is required to be supported or verified by an oath, the affirmation is the equivalent of an oath.

(c) Whoever swears, affirms, declares, or gives testimony in any form, where an oath is authorized by law, is lawfully sworn, and is guilty of perjury in a case where he would be guilty of that crime if sworn according to the forms of the common law. (Dec. 23, 1963, 77 Stat. 517, Pub. L. 88-241, § 1; 1973 Ed., § 14-101.)

Cited in *In re Williams*, App. D.C., 464 A.2d 115 (1983).

§ 14-102. Impeachment of witnesses.

(a) The credibility of a witness may be attacked by any party, including the party calling the witness.

(b) A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is (1) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (2) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the witness of recent fabrication or improper influence or motive or an identification of a person made after perceiving the person. Such prior statements are substantive evidence. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88-241, § 1; 1973 Ed., § 14-102; ———, 1995, D.C. Law 10- (Act 10-375), § 4, 42 DCR 20.)

Effect of amendments. — D.C. Law 10- (Act 10-375) rewrote the section and the section heading preceding the text.

Legislative history of Law 10- (Act 10-375). — Law 10- (Act 10-375), the "Public Safety and Law Enforcement Support Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-628, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-375 and transmitted to both Houses of Congress for its review. D.C. Law 10- (Act 10-375) is projected to become law on May 19, 1995.

This section is statutory basis for use of prior inconsistent statements. In re L.D.O., App. D.C., 400 A.2d 1055 (1979).

Purpose of impeachment. — Impeachment by a party of its own witness is permitted to cancel or neutralize any damaging effect of the surprising testimony. *Scott v. United States*, App. D.C., 412 A.2d 364 (1980).

The purpose of the surprise statute is not to enable the party that claims surprise to fill in an unexpected gap in its proof, but rather to permit impeachment of the witness with a prior inconsistent statement, and prior statements of the witness are admissible only as proof that the witness is unbelievable. *Waldron v. United States*, App. D.C., 613 A.2d 370 (1992) (decision prior to 1995 amendment).

Impeachment of one's own witness is strictly limited to the situation stated in this section. *Fletcher v. United States*, App. D.C., 524 A.2d 40 (1987) (decision prior to 1995 amendment).

Applicability of section. — This section was not applicable where the government made no claim of surprise at trial or on appeal, and could not have done so given the earlier recantation by its witness. *Fletcher v. United States*, App. D.C., 524 A.2d 40 (1987) (decision prior to 1995 amendment).

To justify impeachment by a party of its own witness, the affected party must demonstrate not only surprise, but affirmative damage to its case as well. *Scott v. United States*, App. D.C., 412 A.2d 364 (1980); *Jefferson v. United States*, App. D.C., 558 A.2d 298, modified, App. D.C., 571 A.2d 178 (1989), cert. denied, 493 U.S. 1032, 110 S. Ct. 748, 107 L. Ed. 2d 765 (1990).

A party may impeach its own witnesses only after establishing a good-faith claim of surprise. *Beale v. United States*, App. D.C., 465 A.2d 796 (1983), cert. denied, 465 U.S. 1030, 104 S. Ct. 1293, 79 L. Ed. 2d 694 (1984); *Hawkins v. United States*, App. D.C., 606 A.2d 753 (1992) (decision prior to 1995 amendment).

Where the purpose of impeachment was to supply anticipated testimony, and not to neu-

tralize the effect of surprising testimony, impeachment was improperly permitted. In re D.A., App. D.C., 597 A.2d 1331 (1991).

Defendant failed to establish a good faith claim of surprise in order to impeach his witness with his unsworn written confession. *Yelverton v. United States*, App. D.C., 606 A.2d 181 (1992) (decision prior to 1995 amendment).

Prior statements by witness can be used only to neutralize affirmative harm, and not to supply anticipated testimony, when a party has been taken by surprise by the witness' testimony and can demonstrate affirmative damage. *Waldron v. United States*, App. D.C., 613 A.2d 370 (1992).

The failure of a witness to give certain anticipated testimony is not affirmative harm, not even when that testimony is essential to a party's case. *Waldron v. United States*, App. D.C., 613 A.2d 370 (1992).

Presumption of good faith. — "Surprise," referred to in this section, is presumably found upon good faith. *Brown v. United States*, 411 F.2d 716 (D.C. Cir. 1969) (decision prior to 1995 amendment).

Belief that witness would repudiate prior statement barred claim of surprise.

— If the government were positive that one of its witnesses would repudiate a prior statement at trial, it could not be surprised when he did so, and the government was not entitled to claim benefit of this section. *Baker v. United States*, App. D.C., 324 A.2d 194 (1974) (decision prior to 1995 amendment).

Scope of impeachment limited. — Since the sole justification for impeachment of one's own witness is to remove the damage caused by the surprise testimony, the scope of impeachment must be limited to evidence which will further that end. *Scott v. United States*, App. D.C., 412 A.2d 364 (1980) (decision prior to 1995 amendment).

When a party is taken by surprise by the evidence of his witness, the latter may be interrogated as to inconsistent statements previously made by him for the purpose of refreshing his recollection and inducing him to correct his testimony, and the party so surprised may also show the facts to be otherwise than as stated, although this incidentally tends to discredit the witness. *Troublefield v. United States*, 372 F.2d 912 (D.C. Cir. 1966) (decision prior to 1995 amendment).

Where witness merely fails to give certain hope for testimony, the problem of the witness' credibility is not reached and impeachment of the witness is unavailable. *Scott v. United States*, App. D.C., 412 A.2d 364 (1980).

Prior inconsistent statement used to impeach witness is admissible solely to affect credibility of witness, and is not to be considered as support for the truth of its contents.

United States v. Gilliam, 484 F.2d 1093 (D.C. Cir. 1973).

When a witness denies giving an answer in a deposition or does not remember doing so and his recollection is not refreshed on a reading of the questions and his answers, the deposition should be offered and received as evidence that the statements were made but only to affect the credibility and not as affirmative evidence. *Firemen's Ins. Co. v. Henry Fuel Co.*, App. D.C., 245 A.2d 127 (1968).

Prior inconsistent statements are admissible only to evaluate the witness' present truthfulness. *Gordon v. United States*, App. D.C., 466 A.2d 1226 (1983).

And such statement cannot be considered as substantive evidence. *Byrd v. United States*, 342 F.2d 939 (D.C. Cir. 1965).

In the circumstances of a party's impeachment of its own witness, prior inconsistent statements, even those made under oath at a grand jury proceeding, may not be considered as evidence of any fact contained in those statements. *Johnson v. United States*, App. D.C., 544 A.2d 270 (1988).

Prior statements consistent with witness' trial testimony are inadmissible on the theory that mere repetition does not imply veracity. *Reed v. United States*, App. D.C., 452 A.2d 1173 (1982), cert. denied, 464 U.S. 839, 104 S. Ct. 132, 78 L. Ed. 2d 127 (1983).

Exceptions to inadmissibility of witness' prior consistent statements. — In at least 2 exceptional situations a witness' prior consistent statements may be introduced to rehabilitate: Where the witness has been impeached with a portion of a statement and the rest of the statement contains relevant information that could be used to meet the force of the impeachment, and where there is a charge of recent fabrication. *Reed v. United States*, App. D.C., 452 A.2d 1173 (1982), cert. denied, 464 U.S. 839, 104 S. Ct. 132, 78 L. Ed. 2d 127 (1983).

Circumvention of prohibition against bolstering one's own witness impermissible. — The prohibition against bolstering one's own witness with his prior consistent statements cannot be circumvented by first eliciting the witness' inconsistent statement and then rehabilitating the witness with a prior consistent statement. *Reed v. United States*, App. D.C., 452 A.2d 1173 (1982), cert. denied, 464 U.S. 839, 104 S. Ct. 132, 78 L. Ed. 2d 127 (1983).

Adoption of prior inconsistent statements. — When a witness adopts the prior inconsistent statement, the prior statement may be used as substantive evidence. *Byers v. United States*, App. D.C., 649 A.2d 279 (1994) (decision prior to 1995 amendment).

Neither the absence of a proper foundation for the impeachment nor the omission of a cautionary instruction is reversible error where

the witness adopts the impeaching evidence. *Byers v. United States*, App. D.C., 649 A.2d 279 (1994) (decision prior to 1995 amendment).

Refreshing witness' recollection is not impeachment. — Refreshing the witness' recollection by showing him part of an earlier written statement he had made to police is not impeachment under this section. *Dobson v. United States*, App. D.C., 426 A.2d 361 (1981).

There was no plain error in the trial court's failure to give an immediate limiting instruction where the government did not impeach its own witness, but rather refreshed the witness' recollection regarding a prior statement. *Jones v. United States*, App. D.C., 579 A.2d 250 (1990).

Rehabilitation of witness is not impeachment. — Where witness testified on direct examination that she saw victim in a restaurant on October 27, but on cross-examination witness said she was not sure of the date, and on redirect examination defendant's counsel sought to introduce witness's statement to a police officer that she saw victim on October 27, statement was not admissible under this section, as defendant's counsel did not seek to impeach witness, but to rehabilitate her after she had been impeached by the prosecutor, and this would have been error in the absence of any suggestion of fabrication or a motive to lie. *Mitchell v. United States*, App. D.C., 569 A.2d 177, cert. denied, 498 U.S. 986, 111 S. Ct. 521, 112 L. Ed. 2d 532 (1990).

Surprise not defeated by reluctance to testify. — A claim of surprise is not defeated simply because a witness is reluctant to testify. *Byers v. United States*, App. D.C., 649 A.2d 279 (1994) (decision prior to 1995 amendment).

Recalcitrant witness must be given opportunity to explain inconsistency. — Before the actual proof of the inconsistent statements may be given by a party surprised by the testimony of his own witness, the witness must be confronted with the circumstances of the earlier statement, he must be asked whether or not he made such statement, and he must be given the opportunity to explain. *Troublefield v. United States*, 372 F.2d 912 (D.C. Cir. 1966).

Wide latitude in discretion of judge is to be allowed in examination of a recalcitrant witness. *Troublefield v. United States*, 372 F.2d 912 (D.C. Cir. 1966).

Permitting the prosecutor to read the statements of government witnesses in their entirety to a jury in the course of his use of them for impeachment purposes pursuant to a claim of surprise was not an abuse of discretion. *Coleman v. United States*, 371 F.2d 343 (D.C. Cir. 1966), cert. denied, 386 U.S. 945, 87 S. Ct. 979, 17 L. Ed. 2d 875 (1967).

Continuance denied where statements of witness deemed consistent. — Since the testimony of a police officer at the trial concern-

ing the execution of search warrant was not inconsistent with his other statements or with the testimony of defense witnesses, the defendant was not entitled to a continuance for the purpose of investigating alleged inconsistencies in the police testimony. *Simms v. United States*, App. D.C., 276 A.2d 434 (1971).

Section contemplates representation to jury as to admissibility of evidence. — This section contemplates a ruling by the trial court which comprehends, in addition to a finding of surprise, immediate representation to the jury as to the purpose for which the impeaching statements are being permitted. *Coleman v. United States*, 371 F.2d 343 (D.C. Cir. 1966), cert. denied, 386 U.S. 945, 87 S. Ct. 979, 17 L. Ed. 2d 875 (1967).

Trial court is required to give immediate cautionary instruction when a party impeaches its own witness with prior inconsistent statements, stating that the jury may consider the prior statements only in evaluating the witness' credibility. *Gordon v. United States*, App. D.C., 466 A.2d 1226 (1983).

Failure of court to give cautionary instruction constitutes reversible error. — Under this section, a trial court is required to give, sua sponte, a cautionary instruction as to the limited purpose for which the evidence of the prior statements can be used, and except in cases of explicit waiver by the defense counsel, failure to do so constitutes reversible error. *United States v. Gilliam*, 484 F.2d 1093 (D.C. Cir. 1973).

Impeachment proper. — Court properly allowed the government to impeach the witness it had placed on the stand. *Price v. United States*, App. D.C., 545 A.2d 1219 (1988).

Where there is a substantial likelihood of prejudice to the defendant arising from the jury's likely improper consideration of an impeaching statement as substantive evidence, the trial court commits reversible error in failing to give a cautionary instruction sua sponte. *Towles v. United States*, App. D.C., 428 A.2d 836 (1981).

Immediately after the prosecution has impeached its own witness with a prior statement, the court must give a cautionary instruction advising the jury that the prior statement

is admissible only for impeachment; failure to do so constituted error. *Beale v. United States*, App. D.C., 465 A.2d 796 (1983), cert. denied, 465 U.S. 1030, 104 S. Ct. 1293, 79 L. Ed. 2d 694 (1984).

There was a rational basis for the trial court's finding of surprise where the prosecutor expected that the sworn trial testimony would be consistent with prior sworn grand jury testimony, rather than with informal discussions with defense representatives. *Byers v. United States*, App. D.C., 649 A.2d 279 (1994) (decision prior to 1995 amendment).

Impeachment improper. — The trial court committed reversible error when it permitted the government to impeach its own witness, where the "surprise" testimony did not affirmatively damage the government's case. *Waldron v. United States*, App. D.C., 613 A.2d 370 (1992).

Scope of appellate review. — Trial court ruling that a party could not have been truly surprised by trial testimony may not be disturbed on appeal unless it plainly appears that the ruling is without any rational basis. *Crain v. Allison*, App. D.C., 443 A.2d 558 (1982); *Stewart v. United States*, App. D.C., 490 A.2d 619 (1985).

This section vests broad discretion in the trial court, and its finding of surprise will not be overturned unless it is without a rational basis. *Byers v. United States*, App. D.C., 649 A.2d 279 (1994) (decision prior to 1995 amendment).

When the trial court fails to give the immediate cautionary instruction, the court on appeal is not obliged automatically to reverse; rather, the court must review the record to ascertain whether the verdict was not substantially swayed by the error. *Gordon v. United States*, App. D.C., 466 A.2d 1226 (1983).

Cited in *Davis v. United States*, App. D.C., 315 A.2d 157 (1974); *Parker v. United States*, App. D.C., 363 A.2d 975 (1976); *Kitt v. United States*, App. D.C., 379 A.2d 973 (1977); *Johnson v. United States*, App. D.C., 387 A.2d 1084 (1978); *Lucas v. United States*, App. D.C., 436 A.2d 1282 (1981), aff'd, App. D.C., 522 A.2d 876 (1987); *McAdoo v. United States*, App. D.C., 515 A.2d 412 (1986); *Chaabi v. United States*, App. D.C., 544 A.2d 1247 (1988).

§ 14-103. Depositions for use in State and Territorial Courts.

When a commission is issued or notice given to take the testimony of a witness found within the District of Columbia, to be used in an action pending in a court of a State, territory, commonwealth, possession, or place under the jurisdiction of the United States, the testimony may be taken by leave of a judge of the United States District Court in like manner and with like effect as other depositions are taken in United States district courts, or by leave of a

judge of the Superior Court of the District of Columbia in the manner prescribed by the rules of that court. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 143(1); 1973 Ed., § 14-103.)

Cross references. — As to depositions in Probate Court, see § 16-3110. As to depositions in criminal cases, see § 23-108.

§ 14-104. Testimony of nonresident witnesses for use in Superior Court.

If the testimony of nonresident witnesses is required by either party to a civil action or proceeding in the Superior Court of the District of Columbia the Court, upon motion designating the names of the witnesses, may appoint an examiner to take their testimony, to whom it shall issue a commission. The testimony shall be taken as provided in the rules of the Superior Court. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 143(2)(A); 1973 Ed., § 14-104.)

CHAPTER 3. COMPETENCY OF WITNESSES.

Sec.	Sec.
14-301. Parties and other interested persons generally.	ment by evidence of conviction of crime.
14-302. Testimony against deceased or incapable person.	14-306. Husband and wife.
14-303. Testimony of deceased or incapable person.	14-307. Physicians and mental health professionals.
14-304. Death or incapacity of partner or other interested person.	14-308. Assessment officials as expert witnesses in condemnation proceedings.
14-305. Competency of witnesses; impeach-	14-309. Clergy.

§ 14-301. Parties and other interested persons generally.

Except as otherwise provided by law, a person is not incompetent to testify in a civil action or proceeding by reason of his being a party thereto or interested in the result thereof. If otherwise competent to testify, he is competent to give evidence on his own behalf and competent and compellable to give evidence on behalf of any other party to the action or proceeding. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88-241, § 1; 1973 Ed., § 14-301.)

Interest of witness is a matter that goes to the weight of his testimony and does not go to his competence. *Liberty Mut. Ins. Co. v. B. Frank Joy Co.*, 424 F.2d 831 (D.C. Cir. 1970).

Disinterestedness is not required of expert witnesses. *Liberty Mut. Ins. Co. v. B. Frank Joy Co.*, 424 F.2d 831 (D.C. Cir. 1970).

Section makes no exception for information acquired by special training or rendering professional services since such an exception would be at odds with the remedial nature and purpose of the adverse witness rule, which is intended to ensure that persons who are eyewitnesses to and participants in the event giving rise to an action fully disclose all matters pertinent and relevant to the issues in dispute. *Abbey v. Jackson*, App. D.C., 483 A.2d 330 (1984).

This rule is intended to ensure that persons who are eyewitnesses to and participants in an event giving rise to an action fully disclose all matters pertinent and relevant to the issues in dispute. Witnesses with personal knowledge of relevant facts do not have a right to refuse to testify on the ground that the answer will be expert evidence, and they have received no

expert witness fee. Physicians who are participants or eyewitnesses in events leading to a cause of action cannot refuse to testify on pertinent and relevant issues merely because their information is the result of professional training. *Richbow v. District of Columbia*, App. D.C., 600 A.2d 1063 (1991).

Trial judge determines qualifications of expert witness. — Qualifications of an expert witness to express an opinion on a particular matter are for the determination of a trial judge. *Waggaman v. Forstmann*, App. D.C., 217 A.2d 310 (1966).

And decision will not be disturbed absent abuse of discretion. — The decision of a trial judge on the qualifications of an expert witness to express an opinion on a particular matter will not ordinarily be disturbed on appeal except for a clear showing of abuse of discretion. *Waggaman v. Forstmann*, App. D.C., 217 A.2d 310 (1966).

Cited in *Washington Times v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 530 A.2d 1186 (1987); *Goulart v. Barry*, 119 WLR 1197 (Super. Ct. 1991).

§ 14-302. Testimony against deceased or incapable person.

- (a) In a civil action against:
- (1) a person who, from any cause, is legally incapable of testifying, or
 - (2) the committee, trustee, executor, administrator, heir, legatee, devisee, assignee, or other representative of a deceased person or of a person so incapable of testifying,

a judgment or decree may not be rendered in favor of the plaintiff founded on the uncorroborated testimony of the plaintiff or of the agent, servant, or employee of the plaintiff as to any transaction with, or action, declaration or admission of, the deceased or incapable person.

(b) In an action specified by subsection (a) of this section, if the plaintiff or his agent, servant, or employee, testifies as to any transaction with, or action, declaration, or admission of, the deceased or incapable person, an entry, memorandum, or declaration, oral or written, by the deceased or incapable person, made while he was capable and upon his personal knowledge, may not be excluded as hearsay. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1; 1973 Ed., § 14-302.)

Intent of section. — This section was intended to protect a person representing the deceased against potentially fraudulent suits. *Gray v. Gray*, App. D.C., 412 A.2d 1208 (1980).

Effect of section. — This section does no more than preclude a judgment in favor of a plaintiff and against the representatives of a deceased defendant based on the uncorroborated testimony of the plaintiff as to any action, declaration or admission of the deceased. *Cobb v. Cobb*, 116 WLR 1993 (Super. Ct. 1988).

This section permits a judgment against an estate of a deceased person based essentially on the survivor's testimony if there is other evidence from which reasonable men might conclude that his testimony is probably true. *Toliver v. Durham*, App. D.C., 240 A.2d 359 (1968); *In re Estate of Turner*, App. D.C., 441 A.2d 274 (1982).

Sufficiency of evidence. — Under this section, each case depends upon its own facts and the test is whether the evidence, taken as whole, tends to make the story substantially more credible. *Toliver v. Durham*, App. D.C., 240 A.2d 359 (1968).

Admissible evidence. — Where the clear thrust of plaintiff's testimony at trial was that her deceased husband did not provide her with notice of the divorce proceeding and that with diligent efforts, he could have located her, letters, written by the deceased to his sister which bear on the issue of whether he was motivated to falsely represent his effort to locate her, would fall directly within the type of evidence declared admissible by subsection (b). *Cobb v. Cobb*, 116 WLR 1993 (Super. Ct. 1988).

Declarations of decedent admissible on corroborated testimony. — Where witnesses, who are not disqualified by this section, testified that in their presence the decedent spoke of a car as his landlady's car and of a joint bank account in a manner indicating that he

considered it as the landlady's, there was sufficient corroboration to permit the landlady to testify, in a suit by the decedent's administratrix to recover the balance of a bank account held in the joint names of the decedent and the decedent's landlady and to recover the automobile registered in both the decedent's and the landlady's names, as declarations and admissions of the decedent. *Prather v. Hill*, App. D.C., 250 A.2d 690 (1969).

Where the defendant did not offer any explanation as to why her name was on the deed that would support her assertion that she was to be the sole owner of the property after her mother's death and, to the contrary, her testimony, regarding the conduct of the children in moving in and out of the house and in maintaining and supporting the house, reflected an understanding that the home was to be available in every respect to all of the children, and where, in a letter to her brother, the defendant stated that the decedent intended that the home should be kept for the use of all the children, there was substantial corroborative evidence to support the plaintiff's testimony that decedent orally agreed to make the property available for the children. *Gray v. Gray*, App. D.C., 412 A.2d 1208 (1980).

Judgment for plaintiff precluded by this section. — Where the only testimony offered by plaintiff of decedent's promise of his non-exposure to the Acquired Immune Deficiency Syndrome virus was the testimony of plaintiff, claim based on this uncorroborated misrepresentation was barred by this section. *Hosford v. Estate of Campbell*, 708 F. Supp. 7 (D.D.C. 1989).

Cited in *Berenter v. Staggers*, 362 F.2d 971 (D.C. Cir. 1966); *Neves v. Riley*, 447 F. Supp. 306 (D.D.C. 1978); *Davis v. Altmann*, App. D.C., 492 A.2d 884 (1985); *Kuder v. United Nat'l Bank*, App. D.C., 497 A.2d 1105 (1985).

§ 14-303. Testimony of deceased or incapable person.

When a party, after having testified at a time while he was competent to do so, dies or becomes incapable of testifying, his testimony may be given in evidence in any trial or hearing in relation to the same subject-matter between the same parties or their legal representatives, as the case may be; and in such a case the opposite party may testify in opposition thereto. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1; 1973 Ed., § 14-303.)

This section was not designed as exclusive means of introducing former testimony and has not displaced the common law in the area of witness unavailability. *Warren v. United States*, App. D.C., 436 A.2d 821 (1981), *aff'd*, App. D.C., 515 A.2d 208 (1986).

This section, by its terms, applies only to testimony of a party, not to testimony of a nonparty witness. *Ready v. United States*, App. D.C., 445 A.2d 982 (1982), *cert. denied*, 460 U.S. 1025, 103 S. Ct. 1279, 75 L. Ed. 2d 498 (1983).

To be admissible under this section, testimony must be from one who was party at original proceeding and who is a party personally or by legal representative to the proceedings in which the testimony is offered. *United*

States v. Franklin, 235 F. Supp. 338 (D.D.C. 1964); *Warren v. United States*, App. D.C., 436 A.2d 821 (1981), *aff'd*, App. D.C., 515 A.2d 208 (1986).

Testimony of conversation with decedent before decedent's death admissible.

— Conversation that deceased vendor had with one of her daughters during her life in which she told her daughter that the government had informed the vendor that she was not legally entitled to any compensation for a gravel pit on the land sold by the vendor to Army Corps of Engineers is admissible only if given as testimony before the vendor's death. *Mills v. United States*, 410 F.2d 1255 (D.C. Cir. 1969); *Jones v. United States*, App. D.C., 441 A.2d 1004 (1982).

§ 14-304. Death or incapacity of partner or other interested person.

Where any of the original parties to a contract or transaction which is the subject of investigation are partners or other joint contractors, or jointly entitled or liable, and some of them have died or become incapable of testifying, any others with whom the contract or transaction was personally made or had, or in whose presence or with whose privity it was made or had, or admissions in relation to the same were made, are not, nor is the adverse party, incompetent to testify because some of the parties or joint contractors, or those jointly entitled or liable, have died or become incapable of testifying. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1; 1973 Ed., § 14-304.)

§ 14-305. Competency of witnesses; impeachment by evidence of conviction of crime.

(a) No person is incompetent to testify, in either civil or criminal proceedings, by reason of his having been convicted of a criminal offense.

(b)(1) Except as provided in paragraph (2), for the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a criminal offense shall be admitted if offered, either upon the cross-examination of the witness or by evidence aliunde, but only if the criminal offense (A) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, or (B) involved dishonesty or false statement (regardless of punishment). A party establishing conviction by means of cross-examination shall not be bound by the witness' answers as to matters relating to the conviction.

(2)(A) Evidence of a conviction of a witness is inadmissible under this section if —

(i) the conviction has been the subject of a pardon, annulment, or other equivalent procedure granted or issued on the basis of innocence, or

(ii) the conviction has been the subject of a certificate of rehabilitation or its equivalent and such witness has not been convicted of a subsequent criminal offense.

(B) In addition, no evidence of any conviction of a witness is admissible under this section if a period of more than ten years has elapsed since the later of (i) the date of the release of the witness from confinement imposed for his most recent conviction of any criminal offense, or (ii) the expiration of the period of his parole, probation, or sentence granted or imposed with respect to his most recent conviction of any criminal offense.

(c) For purposes of this section, to prove conviction of crime, it is not necessary to produce the whole record of the proceedings containing the conviction, but the certificate, under seal, of the clerk of the court wherein the proceedings were had, stating the fact of the conviction and for what cause, shall be sufficient.

(d) The pendency of an appeal from a conviction does not render evidence of that conviction inadmissible under this section. Evidence of the pendency of such an appeal is admissible. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 550, Pub. L. 91-358, title I, § 133(a); 1973 Ed., § 14-305.)

Constitutionality of section. — This section is constitutional. *Davis v. United States*, App. D.C., 313 A.2d 884 (1974).

This section is not unconstitutional. *United States v. Belt*, 514 F.2d 837 (D.C. Cir. 1975).

This section is not unconstitutional as denying due process and trial by impartial jury in violation of the Fifth and Sixth Amendments. *Dixon v. United States*, App. D.C., 287 A.2d 89, cert. denied, 407 U.S. 926, 92 S. Ct. 2474, 32 L. Ed. 2d 813 (1972); *Hill v. United States*, App. D.C., 434 A.2d 422 (1981), cert. denied, 454 U.S. 1151, 102 S. Ct. 1020, 71 L. Ed. 2d 307 (1983).

Section compared to federal rule. — This section calls for a broader interpretation of “dishonesty or false statement” than the identically worded Rule 609 (a) (2) of the Federal Rules of Evidence. *Bates v. United States*, App. D.C., 403 A.2d 1159 (1979).

Intent of 1970 amendment. — The 1970 amendment to this section shifting the language from “crime” to “criminal offense” was intended not to constrict but to broaden the category of convictions usable under this section. *United States v. Edmonds*, 524 F.2d 62 (D.C. Cir. 1975).

Application of 1970 amendment. — To the extent that the 1970 amendment of this section, mandating the admission into evidence of certain prior convictions if a defendant takes the stand, is applied in trials for offenses com-

mitted before its effective date, such application constitutes a prohibited *ex post facto* law. *United States v. Henson*, 486 F.2d 1292 (D.C. Cir. 1973).

Application of section. — This section was intended to apply only to District of Columbia Code crimes and not to apply to United States Code crimes. *United States v. Hairston*, 495 F.2d 1046 (D.C. Cir. 1974).

This section was intended to exclude primarily those offenses resulting from passion and short temper. *Durant v. United States*, App. D.C., 292 A.2d 157 (1972), cert. denied, 409 U.S. 1127, 93 S. Ct. 946, 35 L. Ed. 2d 259 (1973).

Purpose of impeachment is not to show that the accused who takes the stand is a “bad” person but rather to show the background facts which bear directly on whether the jurors ought to believe him rather than other and conflicting witnesses. *Gordon v. United States*, 383 F.2d 936 (D.C. Cir. 1967), cert. denied, 390 U.S. 1029, 88 S. Ct. 1421, 20 L. Ed. 2d 287 (1968).

Impeachment of an accused by proof of past criminal violations remains a legitimate technique. *Brooke v. United States*, 385 F.2d 279 (D.C. Cir. 1967).

Dishonesty or false statement. — This section’s legislative history indicates Congress’ intent to define broadly the requirement of “dishonesty or false statement,” and to exclude from its scope only crimes involving passion or

short temper, such as simple assault. *Ross v. United States*, App. D.C., 520 A.2d 1064 (1987).

Malicious destruction of property does involve "dishonesty or false statement" within the meaning of this section. *Ross v. United States*, App. D.C., 520 A.2d 1064 (1987).

Intent of subsection (b)(2)(A)(ii) of this section is to shield from impeachment those persons who, although previously convicted of a crime, have nevertheless achieved such a level of character rehabilitation that the prior conviction no longer has any relevance to the witness' credibility. *Williams v. United States*, App. D.C., 421 A.2d 19 (1980).

Grant of a reduction of minimum sentence is not the equivalent of a certificate of rehabilitation. *Williams v. United States*, App. D.C., 421 A.2d 19 (1980).

Limits on manner of impeachment. — To minimize the risk of jury misuse of other crimes evidence, the prosecutor must not impeach the defendant with prior convictions in a manner which suggests to the jury that because of his prior criminal acts, the defendant is guilty of the crimes charged. *Fields v. United States*, App. D.C., 396 A.2d 522 (1978).

Prior criminal convictions may not be automatically received into evidence for purposes of impeachment. *Davis v. United States*, 409 F.2d 453 (D.C. Cir. 1969).

In permitting evidence of a prior conviction to impeach a defendant when he testifies, this section furnishes no foundation for its use for any other purpose, and care on part of the court is required to confine such evidence to the permissible purpose. *United States v. Carter*, 482 F.2d 738 (D.C. Cir. 1973).

Discretionary power of court. — This section mandates that the court allow the evidence of prior convictions, and the trial court has no discretion in the matter where a conviction falls within the purview of this section. *United States v. Edmonds*, 524 F.2d 62 (D.C. Cir. 1975).

The Fifth and Sixth Amendments require the trial court to retain some discretion to exclude any prior convictions not meeting criteria set forth in this section. *Dixon v. United States*, App. D.C., 287 A.2d 89, cert. denied, 407 U.S. 926, 92 S. Ct. 2474, 32 L. Ed. 2d 813 (1972).

Subsection (b)(1) of this section gives the trial judge no discretion either to exclude felony convictions less than 10 years old or to admit convictions more than 10 years old. *United States v. Lipscomb*, 702 F.2d 1049 (D.C. Cir. 1983).

Section does not encompass charges dropped in exchange for guilty plea. *Coles v. United States*, App. D.C., 452 A.2d 1190 (1982).

The trial court has no discretion to preclude the use of prior convictions for impeachment, including reference to the nature of the crimes, even though in a particular case the prejudicial

impact on the party they are used against may outweigh the probative value to the party who elicits them. *Langley v. United States*, App. D.C., 515 A.2d 729 (1986).

Judge has duty to make sufficient inquiry. — Where defense raises an issue of whether the evidence of defendant's prior convictions should be excluded from the trial for purposes of impeaching the defendant's credibility when he testifies, even though the burden of persuasion remains on the defendant, there is a duty on judge to make sufficient inquiry to inform himself on relevant considerations. *Jones v. United States*, 402 F.2d 639 (D.C. Cir. 1968).

No denial of due process where outcome of trial not affected. — Where there was no reasonable probability that production of undisclosed juvenile records and their use for impeachment purposes would have affected the outcome of defendant's trial, defendant was not denied due process. *Johnson v. United States*, App. D.C., 537 A.2d 555 (1988).

When the defendant elects to take the stand, he may be impeached by evidence of his prior convictions. *Middleton v. United States*, App. D.C., 401 A.2d 109 (1979).

A prior conviction may not be introduced by the prosecution to prove that a defendant is guilty of the crime with which he is charged, but once the defendant testifies his credibility may be impeached by reference to his prior convictions. *Fields v. United States*, App. D.C., 396 A.2d 522 (1978).

Congress has left no doubt that, in the District of Columbia, when a defendant takes the stand the court must permit the prosecution to attack his or her credibility by introducing recent prior convictions for felonies and other crimes involving dishonesty or false statement. *Hill v. United States*, App. D.C., 434 A.2d 422 (1981), cert. denied, 454 U.S. 1151, 102 S. Ct. 1020, 71 L. Ed. 2d 307 (1983); *Sweet v. United States*, App. D.C., 449 A.2d 315 (1982).

Foundation not necessary for impeachment by evidence of prior convictions. — Cross-examination by the prosecutor which consists solely of impeachment of a defendant's credibility by prior convictions is authorized by subsection (b); the statute does not require that before such impeachment the government, or the trial judge, must lay a foundation either by other questions or instructions to the jury. *Reed v. United States*, App. D.C., 485 A.2d 613 (1984).

Test to determine whether prosecutor's use of previous convictions is improper is whether the prosecutor's reference to the defendant's prior convictions during his cross-examination can be intended only to suggest to the jury that defendant is guilty of the crime charged because of his previous conviction or

convictions. *Baptist v. United States*, App. D.C., 466 A.2d 452 (1983).

Requisites for cross-examination about prior convictions. — Consistent with the statutory requirement for proof of a prior conviction, a prosecutor may not cross-examine a defendant about a prior conviction unless the prosecutor has a certificate under seal as provided by subsection (c) or the trial judge has ruled in advance of the cross-examination or offer of proof aliunde that the government has presented sufficiently reliable proof of a prior conviction by a defendant to permit cross-examination or proof aliunde; once a defendant has denied a conviction, the party posing the question must be prepared to prove the conviction, in accordance with the ruling of the trial judge. *Reed v. United States*, App. D.C., 485 A.2d 613 (1984).

Prosecution to avoid eliciting general denials of presently charged crime. — The government may not pair questions about a defendant's previous convictions for offenses similar to those charged with questions that elicit his general denial of the charged crime or a key element of the charged offense. *Dorman v. United States*, App. D.C., 491 A.2d 455 (1984), cert. denied, 475 U.S. 1124, 106 S. Ct. 1646, 90 L. Ed. 2d 190 (1986).

Test by which particular instances of impeachment can be judged is whether the prosecutor's reference to a defendant's previous conviction is such that, under the circumstances, reasonable jurors would naturally and necessarily regard the manner in which the impeachment is accomplished as implying that the defendant is guilty of the crime charged because he was guilty of past crimes. *Dorman v. United States*, App. D.C., 491 A.2d 455 (1984), cert. denied, 475 U.S. 1124, 106 S. Ct. 1646, 90 L. Ed. 2d 190 (1986).

Five-year old robbery conviction was not too remote for impeachment of credibility of the defendant on trial for robbery. *Weaver v. United States*, 408 F.2d 1269 (D.C. Cir.), cert. denied, 395 U.S. 927, 89 S. Ct. 1785, 23 L. Ed. 2d 245 (1969).

Due process requires production of government witnesses' impeachable convictions. — Due process requires at-trial production of the impeachable convictions of government witnesses, at least to the extent of the government's knowledge about them, and failure to produce these convictions may necessitate a new trial if the suppressed evidence might have affected the outcome. *Lewis v. United States*, App. D.C., 393 A.2d 109 (1978), aff'd on rehearing, App. D.C., 408 A.2d 303 (1979), overruled on other grounds, *Johnson v. United States*, 537 A.2d 555 (1988).

If the government knows about a prior conviction of one of its witnesses, usable for impeachment under this section, then Fifth

Amendment due process requires the government to disclose that conviction to the defendant, upon request. *Lewis v. United States*, App. D.C., 408 A.2d 303 (1979), overruled on other grounds, *Johnson v. United States*, 537 A.2d 555 (D.C. 1988).

The government is committed to furnish to the defendant at a trial the record of all impeachable convictions of the prosecution witnesses. *United States v. Engram*, App. D.C., 337 A.2d 488 (1975), cert. denied, 423 U.S. 1058, 96 S. Ct. 793, 46 L. Ed. 2d 648 (1976).

Suppressed juvenile records. — Due process requires disclosure of a requested but suppressed juvenile record when the court concludes that its use for impeachment under this section might have affected the outcome of the trial. *Lewis v. United States*, App. D.C., 393 A.2d 109 (1978), aff'd on rehearing, App. D.C., 408 A.2d 303 (1979), overruled on other grounds, *Johnson v. United States*, 537 A.2d 555 (1988).

Section comprehends misdemeanor convictions. *Williams v. United States*, 409 F.2d 471 (D.C. Cir. 1969).

Mere plea of guilty was insufficient to constitute "conviction." *United States v. Lee*, 509 F.2d 400 (D.C. Cir. 1974), cert. denied, 420 U.S. 1006, 95 S. Ct. 1451, 43 L. Ed. 2d 765 (1975); *Godfrey v. United States*, App. D.C., 454 A.2d 293 (1982).

Prior conviction for possession of narcotics involves dishonesty or false statement and can be used for impeachment. *Durant v. United States*, App. D.C., 292 A.2d 157 (1972), cert. denied, 409 U.S. 1127, 93 S. Ct. 946, 35 L. Ed. 2d 259 (1973).

Unlawful assaultive conduct does not involve dishonesty or false statement. *United States v. Akers*, App. D.C., 374 A.2d 874 (1977).

Traffic violations do not relate to credibility. *Gordon v. United States*, 383 F.2d 936 (D.C. Cir. 1967), cert. denied, 390 U.S. 1029, 88 S. Ct. 1421, 20 L. Ed. 2d 287 (1968).

Unlawful entry is an impeachable conviction involving dishonesty as contemplated by this section. *Bates v. United States*, App. D.C., 403 A.2d 1159 (1979).

Robbery conviction is admissible in robbery prosecution for impeachment purposes. *United States v. Baber*, 447 F.2d 1267 (D.C. Cir.), cert. denied, 404 U.S. 957, 92 S. Ct. 324, 30 L. Ed. 2d 274 (1971).

Prior conviction of carrying a pistol without a license is within the purview of this section. *Williams v. United States*, App. D.C., 337 A.2d 772 (1975).

Commitment for study under Youth Corrections Act is admissible. — An individual's prior commitment for a study under the Youth Corrections Act is admissible for the limited purpose of impeaching the credibility of that

individual. *Stewart v. United States*, App. D.C., 490 A.2d 619 (1985).

Prior conviction of threats. — Prior conviction of threats to do bodily harm does not qualify for admission under this section. *James v. United States*, App. D.C., 514 A.2d 793 (1986).

Use of prior arrests for purpose of impeachment is limited to those situations in which the arrests are relevant to issues apart from general credibility, e.g., reputation and bias. *Reed v. United States*, App. D.C., 452 A.2d 1173 (1982), cert. denied, 464 U.S. 839, 104 S. Ct. 132, 78 L. Ed. 2d 127 (1983).

Malicious destruction of property conviction admissible. — A misdemeanor conviction for malicious destruction of property may be used to impeach a witness under this section. *Ross v. United States*, App. D.C., 520 A.2d 1064 (1987).

Soliciting prostitution conviction admissible. — Government was properly permitted to impeach defendant's testimony by evidence of 2 prior convictions of soliciting prostitution which constituted convictions involving dishonesty or false statement within meaning of section. *Alston v. United States*, App. D.C., 518 A.2d 439 (1986).

Placement of witness on probation without entering judgment of guilty for drug violations not "prior correction." — Where a government witness has served or is serving a probationary term imposed under § 33-541(e), the witness's treatment under § 33-541(e) does not qualify as a "prior conviction" for impeachment purposes under subsection (b) of this section. *Twitty v. United States*, App. D.C., 541 A.2d 612 (1988).

Evidence of prior convictions is admissible for certain limited purposes for which the probative value of the evidence outweighs its prejudicial character. *United States v. Carter*, 482 F.2d 738 (D.C. Cir. 1973).

Evidence of prior convictions is admissible only as bearing on issue of witness' credibility and must not be allowed improperly to influence the determination of guilt. *Middleton v. United States*, App. D.C., 401 A.2d 109 (1979).

This section does not permit the use of the evidence of prior conviction as proof of guilt. *United States v. Carter*, 482 F.2d 738 (D.C. Cir. 1973).

Use of prior convictions during cross-examination in credibility context permitted. — Where the prosecutor briefly cross-examined defendant in purely a credibility context and at the conclusion of this brought out on the record defendant's prior convictions to end his credibility attack on defendant and complete the cross-examination, this use of prior convictions is permitted by statute in the District. *Dorman v. United States*, App. D.C.,

460 A.2d 986 (1983), aff'd, App. D.C., 491 A.2d 455 (1985).

Where government counsel asked several questions about the details of the offense before concluding his cross-examination with impeachment by previous conviction, the manner of impeachment was permissible. *Baptist v. United States*, App. D.C., 466 A.2d 452 (1983).

Subsection (b)(2) sanctions the use of a defendant's prior convictions for impeachment purposes at trial. When a defendant takes the stand, the court must permit the prosecutor to attack his or her credibility by introducing recent prior convictions for felonies and other crimes involving dishonesty or false statement. *Jones v. United States*, App. D.C., 516 A.2d 513 (1986).

Cross-examination on prior bad acts not resulting in conviction limited. — A witness may be cross-examined on a prior bad act that has not resulted in a criminal conviction only where: (1) The examiner has a factual predicate for such question; and (2) the bad act bears directly upon the veracity of the witness in respect to the issues involved in the trial. Where such impeachment is permitted, evidence of the prior misconduct may be elicited only by cross-examination of the witness; it may not be proved by extrinsic evidence. *Sherer v. United States*, App. D.C., 470 A.2d 732 (1983), cert. denied, 469 U.S. 931, 105 S. Ct. 325, 83 L. Ed. 2d 262 (1984).

Limited admissibility of facts of prior crimes. — While the fact of a prior conviction is admissible for impeachment purposes, the facts of the crime are admissible only to the extent that they are independently relevant to the issues at trial, and they are not admissible to prove a general criminal disposition. *Ward v. United States*, App. D.C., 386 A.2d 1180 (1978).

Convictions timely for purposes of impeachment. — Where a defendant was convicted of robbery in 1952, receiving a sentence of 3 to 15 years, and of robbery in 1963, receiving a sentence of 5 to 15 years, both convictions were admissible for impeachment purposes in defendant's 1976 trial for armed robbery. *Glass v. United States*, App. D.C., 395 A.2d 796 (1978).

Rehabilitation of credibility by explanation of conviction. — If one were lawfully on premises exercising First Amendment rights, then refused to leave upon lawful demand to do so, and was thereupon convicted of unlawful entry, he or she would have an opportunity to rehabilitate credibility by making a "limited explanation" of the circumstances supporting the conviction if the government sought to use it for impeachment. *Bates v. United States*, App. D.C., 403 A.2d 1159 (1979).

Impeachment in administrative proceedings. — In denying an application for a license as a business-chance broker, it was not

an error for the Real Estate Commission to rely in part on a conviction for fraudulent conduct occurring prior to the 10-year period specified by this section as a limitation on the use of prior convictions of witnesses for impeachment purposes in court trials. *Bryant v. Real Estate Comm'n*, App. D.C., 302 A.2d 721 (1973).

Sentence necessary for impeachment. — A defendant (or any other witness) may not be impeached with a prior guilty verdict unless and until there is a judgment of conviction premised on a sentence. A final, appealable judgment of conviction means the sentence. *Langley v. United States*, App. D.C., 515 A.2d 729 (1986).

Trial court committed reversible error by allowing defendant to be impeached with a prior jury verdict of guilty even though no sentence had yet been entered on that verdict, as a mere verdict is not a "conviction" as that term is used in this section. *Franklin v. United States*, App. D.C., 555 A.2d 1010 (1989).

Sexual activity not resulting in conviction cannot be used for impeachment purposes. — Sexual activity not resulting in a felony conviction is not relevant for impeachment of general credibility; this rule ordinarily applies even where the prior sexual activity includes prostitution; therefore, because the complainant had no convictions or adjudications of delinquency for prostitution, she could not be impeached under this section. *Roundtree v. United States*, App. D.C., 581 A.2d 315 (1990).

Conviction for contempt. — Defendant's conviction for contempt for refusal to abide by condition of his pretrial release that he not use drugs constituted a "criminal offense" within the meaning of this section. *Thompson v. United States*, App. D.C., 571 A.2d 192 (1990).

The behavior giving rise to a conviction for contempt is determinative of whether such adjudication constitutes a criminal offense that involved dishonesty or false statement as prescribed by this section. *Thompson v. United States*, App. D.C., 571 A.2d 192 (1990).

Prosecutor improperly used defendant's prior assault conviction to convey the impression that appellant likely committed the assault for which he was currently charged; however, under the circumstances, it was not reversible error under the "plain error" rule. *Harris v. United States*, App. D.C., 618 A.2d 140 (1992).

Section cannot be first attacked on appeal. *United States v. Williams*, 436 F.2d 287 (D.C. Cir. 1970).

Objection in trial court required. — A trial judge's failure to exclude the prior convictions of the witnesses who testified for the defendant was not an abuse of discretion where no objection was made in the trial court. *United*

States v. Williams, 436 F.2d 287 (D.C. Cir. 1970).

The failure to hold a hearing, *sua sponte*, for the purpose of determining whether the defendant's prior convictions should be admitted for impeachment purposes does not require the reversal of a conviction of the defendant who was impeached through the use of evidence as to a crime the defendant did not commit, since the defendant's counsel at the trial did not request such a hearing or even impose a meaningful objection to the choice of a conviction for impeachment purposes. *United States v. Thomas*, 452 F.2d 1373 (D.C. Cir. 1971).

Reference to prior convictions in closing argument. — There is no impropriety *per se* in a prosecutor's reference in closing argument to the defendant's prior convictions if the defendant has testified at trial. Such convictions bear directly on the defendant's credibility as a witness. *Jones v. United States*, App. D.C., 579 A.2d 250 (1990).

Cited in *Ferguson v. District of Columbia*, App. D.C., 208 A.2d 96 (1965); *Pinkney v. United States*, 363 F.2d 696 (D.C. Cir. 1966); *Hood v. United States*, 365 F.2d 949 (D.C. Cir. 1966); *Trimble v. United States*, 369 F.2d 950 (D.C. Cir. 1966); *Ginyard v. United States*, App. D.C., 232 A.2d 590 (1967); *Blakney v. United States*, 397 F.2d 648 (D.C. Cir. 1968); *Evans v. United States*, 397 F.2d 675 (D.C. Cir. 1968), cert. denied, 394 U.S. 907, 89 S. Ct. 1016, 22 L. Ed. 2d 218 (1969); *Smith v. United States*, 406 F.2d 667 (D.C. Cir. 1968), cert. denied, 394 U.S. 963, 89 S. Ct. 1315, 22 L. Ed. 2d 564 (1969); *United States v. Coleman*, 420 F.2d 1313 (D.C. Cir. 1969); *Smith v. United States*, App. D.C., 256 A.2d 901 (1969); *United States v. Bailey*, 426 F.2d 1236 (D.C. Cir. 1970); *United States v. McIntosh*, 426 F.2d 1231 (D.C. Cir. 1970); *United States v. Scarborough*, 452 F.2d 1378 (D.C. Cir. 1971); *Taylor v. United States*, App. D.C., 280 A.2d 79 (1971); *White v. United States*, App. D.C., 283 A.2d 21 (1971); *United States v. Tyson*, 470 F.2d 381 (D.C. Cir. 1972), cert. denied, 410 U.S. 985, 93 S. Ct. 1512, 36 L. Ed. 2d 182 (1973); *In re DeNeveville*, App. D.C., 286 A.2d 225 (1972); *United States v. Morgan*, 476 F.2d 928 (D.C. Cir. 1973); *United States v. Brown*, 476 F.2d 933 (D.C. Cir. 1973); *United States v. McDonald*, 481 F.2d 513 (D.C. Cir. 1973); *Curry v. United States*, App. D.C., 322 A.2d 268 (1974); *United States v. Marshall*, 511 F.2d 1308 (D.C. Cir. 1975); *United States v. Yates*, 524 F.2d 1282 (D.C. Cir. 1975); *Hampton v. United States*, App. D.C., 340 A.2d 813 (1975); *United States v. Henry*, 528 F.2d 661 (D.C. Cir. 1976); *Hale v. United States*, App. D.C., 361 A.2d 212 (1976); *Johnson v. United States*, App. D.C., 366 A.2d 429 (1976); *Jenkins v. United States*, App. D.C., 374 A.2d 581, cert. denied, 434 U.S. 894, 98 S. Ct. 274, 54 L. Ed. 2d 182 (1977); *Dyas v. United States*, App. D.C.,

376 A.2d 827, cert. denied, 434 U.S. 973, 98 S. Ct. 529, 54 L. Ed. 2d 464 (1977); *Jackson v. United States*, App. D.C., 377 A.2d 1151 (1977); *Watkins v. United States*, App. D.C., 379 A.2d 703 (1977); *Kitt v. United States*, App. D.C., 379 A.2d 973 (1977); *Rogers v. United States*, App. D.C., 419 A.2d 977 (1980); *Smith v. United States*, App. D.C., 454 A.2d 822 (1983); *Fitzgerald v. United States*, App. D.C., 472 A.2d 52 (1984); *Lewis v. United States*, App. D.C., 483 A.2d 1125 (1984); *Ford v. United States*, App. D.C., 487 A.2d 580 (1984); *In re C.B.N.*, App. D.C., 499 A.2d 1215 (1985); *United States v. Brooks*, 114 WLR 437 (Super. Ct. 1986); *Settles v. United States*, App. D.C., 522 A.2d 348

(1987); *United States v. Towles*, 116 WLR 501 (Super. Ct. 1988); *Thompson v. United States*, App. D.C., 546 A.2d 414 (1988); *Durant v. United States*, App. D.C., 551 A.2d 1318 (1988); *United States v. Shell*, 117 WLR 765 (Super. Ct. 1989); *United States v. Mendes*, 117 WLR 1589 (Super. Ct. 1989); *Woodward & Lothrop v. Hillary*, App. D.C., 598 A.2d 1142 (1991); *Wilson v. United States*, App. D.C., 606 A.2d 1017 (1992); *Marshall v. United States*, App. D.C., 623 A.2d 551 (1993); *Head v. United States*, App. D.C., 626 A.2d 1382 (1993), cert. denied, — U.S. —, 115 S. Ct. 156, 130 L. Ed. 2d 95 (1994).

§ 14-306. Husband and wife.

(a) In civil and criminal proceedings, a husband or his wife is competent but not compellable to testify for or against the other.

(b) In civil and criminal proceedings, a husband or his wife is not competent to testify as to any confidential communications made by one to the other during the marriage. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1; 1973 Ed., § 14-306.)

Cross references. — As to neglected child proceedings, see § 2-1355.

Section references. — This section is referred to in §§ 2-1355, 16-1005, and 16-2359.

Marital disqualification is designed to insure subjectively unrestrained privacy of communication, free from any fear of compulsory disclosure. *United States v. Lewis*, 433 F.2d 1146 (D.C. Cir. 1970).

Disqualification survives dissolution of marriage. — Disqualification of spouse as a witness in litigation to which other is party survives dissolution of the marriage. *United States v. Lewis*, 433 F.2d 1146 (D.C. Cir. 1970).

Confidentiality of communications made during a common-law marriage survived the dissolution of the common-law marriage. *Jackson v. United States*, App. D.C., 623 A.2d 571, cert. denied, — U.S. —, 114 S. Ct. 649, 126 L. Ed. 2d 607 (1993).

Privilege not to reveal confidential marital communications survives the death of one spouse, but it does not extend to noncommunicative acts. *United States v. Burks*, 470 F.2d 432 (D.C. Cir. 1972).

Disqualification applicable to common-law marriage. — Prosecutor's direct examination of defendant's common-law wife after she said she did not want to testify violated statute safeguarding her privilege not to testify. *Bowler v. United States*, App. D.C., 480 A.2d 678 (1984).

Marital privilege is applicable to common-law marriages, which are recognized by the District of Columbia. *Johnson v. United States*,

App. D.C., 616 A.2d 1216 (1992), cert. denied, — U.S. —, 113 S. Ct. 1611, 123 L. Ed. 2d 172 (1993).

Common-law marriages are covered by the marital privilege. *Jackson v. United States*, App. D.C., 623 A.2d 571, cert. denied, — U.S. —, 114 S. Ct. 649, 126 L. Ed. 2d 607 (1993).

Privilege belongs only to witness spouse. — Under both this section and Federal Rule of Evidence 501 the spousal privilege is that of the witness-spouse alone, not that of the nontestifying spouse. *United States v. Anderson*, 39 F.3d 331 (D.C. Cir. 1994).

Defendant's failure to object to questioning of common-law wife at trial after she said she did not want to testify by raising marital privilege did not constitute a waiver of allegation of error on appeal since the privilege belongs only to the witness spouse, so that matter on appeal is impact of statutory violation on fairness of defendant's trial. *Bowler v. United States*, App. D.C., 480 A.2d 678 (1984).

Scope of confidential communications. — Acts do not become confidential communications merely because during coverage they are performed by one spouse in presence of the other, nor do essential qualities of communication and confidentiality flow automatically from the fact that act seen by other spouse is one that connotes criminal conduct. *United States v. Lewis*, 433 F.2d 1146 (D.C. Cir. 1970).

Assault on wife by a husband is not a "communication" and it is certainly not a "confidential" one so that wife is competent to testify in

criminal proceeding as to assault on her made by her husband. *Morgan v. United States*, App. D.C., 363 A.2d 999 (1976), cert. denied, 431 U.S. 919, 97 S. Ct. 2187, 53 L. Ed. 2d 231 (1977).

Defendant's threat against his wife's father, made in the presence of another member of the family, is not a "confidential communication" to the wife for purposes of this section. *Morgan v. United States*, App. D.C., 363 A.2d 999 (1976), cert. denied, 431 U.S. 919, 97 S. Ct. 2187, 53 L. Ed. 2d 231 (1977).

Exclusion of testimony based on marital privilege was erroneous since at least one person besides defendant and his wife was present when the conversations took place. *Beard v. United States*, App. D.C., 535 A.2d 1373 (1988).

Motion to compel testimony of the spouse of a news reporter was granted where the news reporter had no legal interest in the case in which her spouse's testimony was sought. *Goulart v. Barry*, 119 WLR 1197 (Super. Ct. 1991).

Where testimony concerns matters that took place before the marriage, there is no basis to invoke the privilege concerning confidential marital communications. *Goulart v. Barry*, 119 WLR 1197 (Super. Ct. 1991).

Necessity exception. — The necessity exception to the confidential communications privilege includes crimes done to a child of either spouse; therefore, where defendant's common-law wife was the only witness to an assault against the parties' child, who could not speak for herself, the trial judge did not err in admitting into evidence the wife's testimony about confidential communications to her by defendant. *Johnson v. United States*, App. D.C., 616 A.2d 1216 (1992), cert. denied, — U.S. —, 113 S. Ct. 1611, 123 L. Ed. 2d 172 (1993).

Effect of testimony on marriage. — Adverse impact on a marital relationship alone is insufficient to justify imposition of the adverse spousal testimonial privilege. *Goulart v. Barry*, 119 WLR 1197 (Super. Ct. 1991).

Effect of concealment of act. — This section does not prohibit testimony as to an act where the acting spouse attempted to conceal the act from the testifying spouse. *United States v. Lewis*, 433 F.2d 1146 (D.C. Cir. 1970).

Effect of testimony of spouse before grand jury. — Upon a witness spouse's voluntary decision to testify before the grand jury, there is an acknowledgment of marital disharmony, and the privilege cannot be used at a later trial to insulate the accused from the possibility of conviction and imprisonment. *Croom v. United States*, App. D.C., 546 A.2d 1006 (1988).

Error for court to permit argument regarding absence of spouse as witness. — Where the court refused to instruct the jury on the proper use of the adverse inference to be drawn from the absence of defendant's spouse as a witness, and had not made a finding as to her availability, it was error to have permitted an argument by the prosecution about such an inference. *Kleinbart v. United States*, App. D.C., 426 A.2d 343 (1981), rev'd on other grounds, App. D.C., 553 A.2d 1236 (1989).

Privilege belongs only to witness spouse. — Defendant's failure to object to questioning of common-law wife at trial after she said she did not want to testify by raising marital privilege did not constitute a waiver of allegation of error on appeal since the privilege belongs only to the witness spouse, so that matter on appeal is impact of statutory violation on fairness of defendant's trial. *Bowler v. United States*, App. D.C., 480 A.2d 678 (1984).

Defendant not prejudiced by admission of privileged testimony. — Defendant suffered no prejudice as a result of testimony by former common-law wife, despite the fact that her testimony fell within the spousal privilege, in view of the limited use of her testimony for impeachment purposes, the limiting instruction, and the further instruction given by the court that the jury should consider as fact that appellant never made the remark which the prosecutor sought to elicit. *Jackson v. United States*, App. D.C., 623 A.2d 571, cert. denied, — U.S. —, 114 S. Ct. 649, 126 L. Ed. 2d 607 (1993).

Cited in *Alston v. United States*, App. D.C., 462 A.2d 1122 (1983); *Hammill v. United States*, App. D.C., 498 A.2d 551 (1985); *Hollingsworth v. United States*, App. D.C., 531 A.2d 973 (1987); *Dean v. District of Columbia*, 120 WLR 769 (Super. Ct. 1992); *In re T.M.*, 120 WLR 2541 (Super. Ct. 1992).

§ 14-307. Physicians and mental health professionals.

(a) In the Federal courts in the District of Columbia and District of Columbia courts a physician or surgeon or mental health professional as defined by the District of Columbia Mental Health Information Act of 1978 (D.C. Code, sec. 6-2001 et seq.) may not be permitted, without the consent of the person afflicted, or of his legal representative, to disclose any information, confidential in its nature, that he has acquired in attending a client in a professional capacity and that was necessary to enable him to act in that

capacity, whether the information was obtained from the client or from his family or from the person or persons in charge of him.

(b) This section does not apply to:

(1) evidence in criminal cases where the accused is charged with causing the death of, or inflicting injuries upon, a human being, and the disclosure is required in the interests of public justice;

(2) evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity or where the court is required under prevailing law to raise the defense *sua sponte*, or in the pretrial or posttrial proceedings involving a criminal case where a question arises concerning the mental condition of an accused or convicted person;

(3) evidence relating to the mental competency or sanity of a child alleged to be delinquent, neglected, or in need of supervision in any proceeding before the Family Division of the Superior Court; or

(4) evidence in criminal or civil cases where a person is alleged to have defrauded the District of Columbia or federal government in relation to receiving or providing services under the District of Columbia medical assistance program authorized by title 19 of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. sec. 1396 et seq.). (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 143(3); 1973 Ed., § 14-307; Mar. 3, 1979, D.C. Law 2-136, § 805(b), 25 DCR 5055; Mar. 16, 1985, D.C. Law 5-193, § 7, 32 DCR 1010; Mar. 25, 1986, D.C. Law 6-99, § 1101(a), 33 DCR 729; Apr. 30, 1988, D.C. Law 7-104, § 3, 35 DCR 147.)

Cross references. — As to physical abuse of children, see § 2-1355.

As to waiver of professional privilege, see § 6-2511.

Section references. — This section is referred to in §§ 2-1352, 2-1355, 6-2511, and 16-2359.

Legislative history of Law 2-136. — Law 2-136, the "District of Columbia Mental Health Information Act of 1978," was introduced in Council and assigned Bill No. 2-144, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first, second amended first, and second readings on July 11, 1978, July 25, 1978, September 19, 1978 and October 3, 1978, respectively. Signed by the Mayor on November 1, 1978, it was assigned Act No. 2-292 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-193. — Law 5-193, the "Medicaid Provider Fraud Prevention Amendments Act of 1984," was introduced in Council and assigned Bill No. 5-511, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1984 and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-258 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-99. — Law 6-99, the "District of Columbia Health Occupations Revision Act of 1985," was introduced in Council and assigned Bill No. 6-317, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 17, 1985, and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-127 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

References in text. — The District of Columbia Mental Health Information Act of 1978, referred to in subsection (a) of this section, is now codified in D.C. Code, § 6-2001 et seq.

Physician-patient privilege is purely a statutory creation. *Wilson v. Thornton*, App. D.C., 416 A.2d 228 (1980).

The physician-patient privilege did not exist at common law and is purely a statutory cre-

ation. *United States v. Jackson*, 121 WLR 849 (Super. Ct. 1993).

Privilege may be withdrawn by legislature. — Evidentiary privileges like the physician-patient privilege, granted by the legislature, can be withdrawn by the legislature. In re D.H., 117 WLR 2109 (Super. Ct. 1989).

Purpose of section. — This section seeks to promote greater freedom in communications between physician and patient with regard to matters concerning the disease of the patient by covering their relationship with a cloak of confidence. *Wilson v. Thornton*, App. D.C., 416 A.2d 228 (1980).

One of the major purposes of the privilege provided in this section is to prevent disclosure of information concerning the patient's ailments which might result in his humiliation, embarrassment, or disgrace. *Wilson v. Thornton*, App. D.C., 416 A.2d 228 (1980).

This section creates a mere in-court evidentiary privilege. There is no evidence that this provision was intended to create more than an evidentiary rule or to establish a cause of action or a broader right enforceable in out-of-court settings. *Doe v. Stephens*, 851 F.2d 1457 (D.C. Cir. 1988).

Societal interests. — The issue of what mental health records should be made available to the defense pits two strong societal interests against each other. One is the interest in ensuring that those accused of criminal acts receive a fair trial, while the other is the interest in ensuring that persons with mental health problems can seek treatment without fear of disclosure of statements made during the course of that treatment. In re T.M., 120 WLR 2541 (Super. Ct. 1992).

Injuries inflicted upon a human being. — In order to satisfy the showing that a defendant "inflict[ed] injuries upon a human being" pursuant to subsection (b)(1) of this section, the government must allege, with some specificity, the injuries which the defendant is accused of inflicting. *United States v. Jackson*, 121 WLR 849 (Super. Ct. 1993).

Meaning of "legal representative." — The legislative history of this section is totally devoid of reference to the Congressional intent as to the meaning of the term "legal representative." *Wilson v. Thornton*, App. D.C., 416 A.2d 228 (1980).

A decedent's heirs are his "legal representatives." *Wilson v. Thornton*, App. D.C., 416 A.2d 228 (1980).

The heirs-at-law either jointly or individually, as well as the executor *eo nomine* or de jure, are the "legal representatives" of the decedent for purposes of this section. *Wilson v. Thornton*, App. D.C., 416 A.2d 228 (1980).

Under this section, the duly qualified personal representative is deceased patient's "legal representative" for purposes of gathering infor-

mation with a view to prosecuting a wrongful death claim. *Emmett v. Eastern Dispensary & Cas. Hosp.*, 396 F.2d 931 (D.C. Cir. 1967).

Implied waiver of physician-patient privilege. — An implied waiver exists when a patient discloses, or permits disclosure of, information gained by a physician during the physician-patient relationship; in these circumstances there is no "divisible waiver," so a plaintiff who waives her physician-patient privilege regarding fact evidence, may not preclude the physician from offering expert opinion grounded in the facts which she set before the jury. *Richbow v. District of Columbia*, App. D.C., 600 A.2d 1063 (1991).

All parties concerned need not unite before the privilege may be waived, and any one of those entitled to waive the privilege may do so without the consent of the others. *Wilson v. Thornton*, App. D.C., 416 A.2d 228 (1980).

Anyone claiming through the decedent, personal representative, or some, but not all, of the heirs, may waive the privilege provided for in this section. *Wilson v. Thornton*, App. D.C., 416 A.2d 228 (1980).

Authorization of disclosure on insurance application waived privilege. — Where an application for insurance contained an authorization to the applicant's physicians to disclose any information requested by the insurance company, it was not necessary that the authorization specifically refer to waiver of the physician-patient privilege to constitute a valid waiver of the privilege, for the signing of the authorization necessarily negated the expectation of protected confidentiality which the privilege is intended to assure. *Jones v. Prudential Ins. Co. of Am.*, App. D.C., 388 A.2d 476 (1978).

Privilege not applicable to sanity determinations. — The physician-patient privilege of this section does not apply to a sanity determination pursuant to § 24-301(a) or Superior Court Criminal Procedure Rule 12.2. *White v. United States*, App. D.C., 451 A.2d 848 (1982).

Insanity defense waived privilege. — Notes dictated by a psychiatrist following examination of the accused and letter subsequently written to defense counsel cannot be withheld from the prosecution in homicide case under the physician-patient privilege since the defendant raised insanity defense. *United States v. Carr*, 437 F.2d 662 (D.C. Cir. 1970), cert. denied, 401 U.S. 920, 91 S. Ct. 907, 27 L. Ed. 2d 823 (1971).

Only testimony in court violates privilege. — Statements made by a physician to a newspaper reporter about a patient's drug use did not violate the physician-patient privilege because they did not constitute in-court testimony. *Logan v. District of Columbia*, 447 F. Supp. 1328 (D.D.C. 1978).

Disclosures other than in court. — Where the documents disclosed by the Veterans' Administration were never presented to the grand jury and, since plaintiff was never indicted, were never used as evidence in any judicial proceeding, the subsection (a) in-court evidentiary privilege does not apply and plaintiff accordingly is not entitled to a declaration that the VA's disclosure of his records violated that statute. *John Doe v. DiGenova*, 642 F. Supp. 624 (D.D.C. 1986), modified, 851 F.2d 1457 (D.C. Cir. 1988).

Patient waived physician-patient privilege by filing lawsuit which placed the patient's physical condition at issue and by providing portions of her medical records favorable to her case. *Sklagen v. Greater S.E. Community Hosp.*, 625 F. Supp. 991 (D.D.C. 1984).

By filing a medical malpractice action, a plaintiff waives his privilege against disclosure of any relevant medical information about the plaintiff patient's condition. *Street v. Hedgepath*, App. D.C., 607 A.2d 1238 (1992).

Ex parte interviews with a treating physician are a permissible means of informal discovery when the plaintiff has put the medical condition of that physician's patient at issue by filing a lawsuit. There is no legal basis for excluding the doctor's testimony solely because it was discovered in an ex parte interview. *Street v. Hedgepath*, App. D.C., 607 A.2d 1238 (1992).

Calling a psychotherapist as a witness would constitute a constructive waiver of the testimonial privilege for mental health professionals when it otherwise applies and the interest in providing the government sufficient means to cross-examine a psychologist's expert testimony for the defense would justify a breach of the defendant's privacy by ordering production of the protocols upon which the psychotherapist bases his testimony for government inspection. *Clifford v. United States*, App. D.C., 532 A.2d 628 (1987).

Child neglect proceedings. — The absence of a statutory physician-patient privilege in child neglect proceedings, as a result of the exception created by § 2-1355, does not significantly or impermissibly infringe on any privacy right that a parent may have regarding medical information. *N.H. v. District of Columbia*, App. D.C., 569 A.2d 1179 (1990).

Mental health records. — The interest in ensuring that persons with mental health problems can seek treatment without fear of disclosure of what they tell in confidence to mental health professionals was particularly strong where the complainant sought counseling at a rape crisis center not as a result of a generalized mental health problem, but rather specifically in connection with the incident which formed the basis for the petition. If the records of her statements to the center about the incident, as well as her sexual history, were subject

to disclosure, there could be little doubt that her willingness to seek help from the mental health professionals at the center in the future would have been chilled, and that others who have been the victims of sexual offenses would be hesitant to go to the center for help. In re T.M., 120 WLR 2541 (Super. Ct. 1992).

Trial court to determine if disclosure required under subsection (b). — The "interest of public justice" under subsection (b) is a determination to be made by the trial court and not by the attorney who causes the subpoenas to be issued. *Brown v. United States*, App. D.C., 567 A.2d 426 (1989), cert. denied, 494 U.S. 1037, 110 S. Ct. 1497, 108 L. Ed. 2d 632 (1990).

Disclosure "in the interests of public justice." — The language of paragraph (b)(1) of this section permitting disclosure of mental health records "in the interest of public justice" is broad and imprecise. Under this language, a court must look to the interest not only of the defense, but also of complainants and must balance the interests of both sides, as well as the interests of society as a whole. In re T.M., 120 WLR 2541 (Super. Ct. 1992).

The "interest of public justice" exception does not automatically incorporate all disclosure law developed under Brady and, further, does not make the Brady doctrine applicable to records not in the possession of the government. Instead, where the privacy interest of complainants is so strong, the defense must make a clear showing of specific need before such documents should be turned over for in camera inspection, and the mere possibility that Brady-type material is contained in mental health records is not alone sufficient to require disclosure. In re T.M., 120 WLR 2541 (Super. Ct. 1992).

Defendant's confrontation and due process rights compelled disclosure of portions of complainant's mental health records. — See *United States v. Wright*, 114 WLR 1205 (Super. Ct. 1986).

Leave of court required. — When this section applies and the exception relied upon is that contained in subsection (b), prior leave of the court is required before any subpoenas may be served by anyone for the production of material covered by this section for use in preparing for, or otherwise in connection with, a trial. *Brown v. United States*, App. D.C., 567 A.2d 426 (1989), cert. denied, 494 U.S. 1037, 110 S. Ct. 1497, 108 L. Ed. 2d 632 (1990).

Exclusion of involuntary confession is unaffected by this section. *United States v. Robinson*, 439 F.2d 553 (D.C. Cir. 1970).

Records not in possession of government. — Where the records involved were not in possession of the prosecutorial arm of the federal government, nor in the possession of the government at all, the defendant could not rely on the Jencks Act (18 U.S.C. § 3500) or Rule 16 of the Superior Court Rules of Criminal Proce-

dures to require the government to obtain and produce them. *Nelson v. United States*, App. D.C., 649 A.2d 301 (1994).

Private records. — The government is not obligated to obtain records from private sources, which it does not intend to use for trial, to meet the requirements of the Jencks Act (18 U.S.C. § 3500) or Rule 16 of the Superior Court Rules of Criminal Procedure. *Nelson v. United States*, App. D.C., 649 A.2d 301 (1994).

Correction of records to issue. — Where the defendant was unable to show that medical records related to the child's medical care well beyond the time of the offense at issue were required to meet the interests of the public justice standard or that they were relevant, there was no error in the trial court's ruling denying release of further medical records for the minor victim. *Nelson v. United States*, App. D.C., 649 A.2d 301 (1994).

Federal court declined to recognize cause of action based solely on physician's unauthorized disclosure of information obtained through the physician-patient relationship. *Logan v. District of Columbia*, 447 F. Supp. 1328 (D.D.C. 1978).

Disclosure of Veterans' Administration records. — Exclusive federal regulation of disclosure of veteran's medical records by the Veterans' Records Statute preempts any state or D.C. regulation of such activity and does not encroach upon an area of traditional state regulation. *John Doe v. DiGenova*, 642 F. Supp. 624 (D.D.C. 1986), modified, 851 F.2d 1457 (D.C. Cir. 1988).

This section is inapplicable to the Veterans' Administration release to the U.S. Attorney's Office of patients' medical records. *Doe v. Stephens*, 851 F.2d 1457 (D.C. Cir. 1988).

The District of Columbia Mental Health Information Act, D.C. Code §§ 6-2001 to 2062, neither independently nor in conjunction with this section does not extend the scope of the physician-patient privilege so as to bar the disclosure of patient's records by the Veterans' Administration. *Doe v. Stephens*, 851 F.2d 1457 (D.C. Cir. 1988).

Disclosure pursuant to Firearms Reporting Statutes. — Congress intended for certain medical information regarding gunshot injuries to be protected by the physician-patient privilege, and therefore considered such information confidential, even though it has to be disclosed to the police pursuant to the requirements of the Firearms Reporting Statutes (§ 2-1361 et seq.). *United States v. Jackson*, 121 WLR 849 (Super. Ct. 1993).

Furnishing blood sample for HIV testing. — Defendant charged with rape may not be required to submit blood sample to be tested for HIV retrovirus. *United States v. Garmon*, 120 WLR 105 (Super. Ct. 1992).

Privilege held not waived. — Defendant did not waive his physician-patient privilege prior to trial merely on the government's speculation that defendant would put his medical condition in issue at trial. *United States v. Jackson*, 121 WLR 849 (Super. Ct. 1993).

Cited in *Payne v. Howard*, 75 F.R.D. 465 (D.D.C. 1977); *Kreuzer v. American Academy of Periodontology*, 516 F. Supp. 1034 (D.D.C. 1981); *Doe v. DiGenova*, 779 F.2d 74 (D.C. Cir. 1985); *Vassiliades v. Garfinckel's*, App. D.C., 492 A.2d 580 (1985); *In re O.L.*, 117 WLR 1329 (Super. Ct. 1989); *Goulart v. Barry*, 119 WLR 1197 (Super. Ct. 1991); *Whitaker v. United States*, App. D.C., 616 A.2d 843 (1992).

§ 14-308. Assessment officials as expert witnesses in condemnation proceedings.

In an action for the condemnation of lands, an official or other employee of the District, charged with the duty of appraising real property for assessment purposes, is not disqualified, by reason of the fact that he is so employed, from testifying as an expert witness to the market value of lands, and as to benefits. (Dec. 23, 1963, 77 Stat. 520, Pub. L. 88-241, § 1; 1973 Ed., § 14-308.)

§ 14-309. Clergy.

A priest, clergyman, rabbi, or other duly licensed, ordained, or consecrated minister of a religion authorized to perform a marriage ceremony in the District of Columbia or duly accredited practitioner of Christian Science may not be examined in any civil or criminal proceedings in the Federal courts in the District of Columbia and District of Columbia courts with respect to any —

(1) confession, or communication, made to him, in his professional capacity in the course of discipline enjoined by the church or other religious body to

which he belongs, without the consent of the person making the confession or communication; or

(2) communication made to him, in his professional capacity in the course of giving religious or spiritual advice, without the consent of the person seeking the advice; or

(3) communication made to him, in his professional capacity, by either spouse, in connection with an effort to reconcile estranged spouses, without the consent of the spouse making the communication. (Dec. 23, 1963, 77 Stat. 520, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 143(4); 1973 Ed., § 14-309.)

CHAPTER 5. DOCUMENTARY EVIDENCE.

Sec.

14-501. Proof of record.

14-502. Records of deeds, instruments, and wills.

14-503. Record of will as prima facie evidence of contents and execution.

14-504. Force in District of Columbia of wills probated elsewhere.

Sec.

14-505. Municipal ordinances and regulations.

14-506. Certified mail return receipts as prima facie evidence of delivery.

14-507. Other methods of proof.

§ 14-501. Proof of record.

An exemplification of a record under the hand of the keeper of the record, and the seal of the court or office where the record is made, is good and sufficient evidence to prove a record made or entered in any State, territory, commonwealth or possession of the United States. The certificate of the person purporting to be the keeper of the record, accompanied by the seal, is prima facie evidence of that fact. (Dec. 23, 1963, 77 Stat. 520; Pub. L. 88-241, § 1; 1973 Ed., § 14-501.)

Cross references. — As to presumptive evidence of facts contained in corporate stock books, see § 29-226.

As to presumptive evidence of facts stated in certified copies of certificate of incorporation, see § 29-236.

As to effect of authentication of papers by Superintendent of Insurance, see § 35-401.

As to presumptive evidence of facts contained in stock book of domestic life insurance company, see § 35-615.

As to articles of association of fraternal benefit association as prima facie evidence of existence and due incorporation, see § 35-1209.

As to original policies of liability of successor corporation as prima facie evidence upon division of insurance business of fraternal benefit association, see § 35-1225.

As to transcribed copy of proceedings before Public Utilities Commission admissible as evidence, see § 43-622.

Section references. — This section is referred to in § 2-2616.

Super. Ct. Civ. R. 44(a)(1) elaborates the requirements of this section. *Giles v. District of Columbia*, App. D.C., 548 A.2d 48 (1988).

Authentication by methods authorized by other laws. — This section does not prevent self-authentication of chemist/custodian's report by appearing before a notary public pursuant to § 33-556 although § 33-556 does not incorporate the traditional method of proof of records reflected in this section and Super. Ct. Civ. R. 44(a)(1). *Giles v. District of Columbia*, App. D.C., 548 A.2d 48 (1988).

Seal and the signature established document as a business record, but they were not enough to make its contents admissible. In re D.M.C., App. D.C., 503 A.2d 1280 (1986).

Cited in *Amos v. Shelton*, App. D.C., 497 A.2d 1082 (1985); In re D.M.C., App. D.C., 503 A.2d 1280 (1986).

§ 14-502. Records of deeds, instruments, and wills.

Under the hand of the keeper of a record and the seal of the court or office in which the record was made:

(1) a copy of the record of a deed, or other written instrument not of a testamentary character, where the laws of the State, territory, commonwealth, possession or country where it was recorded require such a record, and that has been recorded agreeably to those laws; and

(2) a copy of a will that the laws require to be admitted to probate and record by judicial decree, and of the decree of the court admitting the will to probate and record —

are good and sufficient prima facie evidence to prove the existence and contents of the deed, will, or other written instrument, and that it was executed as it purports to have been executed. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1; 1973 Ed., § 14-502.)

Cross references. — As to transcript of Surveyor's records, see § 1-911. As to certain irregular deeds legalized, see § 45-804.

§ 14-503. Record of will as prima facie evidence of contents and execution.

A record of a will or codicil recorded in the office of the Register of Wills of the District of Columbia, that has been admitted to probate by a court in the District of Columbia, or a record of the transcript of the record and probate of a will or codicil elsewhere, or of a certified copy thereof filed in the office of the Register of Wills, is prima facie evidence of the contents and due execution of the will or codicil. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 143(5); 1973 Ed., § 14-503.)

§ 14-504. Force in District of Columbia of wills probated elsewhere.

A record in the office of the Register of Wills for the District of Columbia of a duly certified copy, or transcript of the record of proceedings, admitting a will or codicil to probate outside of the District of Columbia; and a record in that office of a will or codicil admitted to probate in the District before June 8, 1898, and not annulled or declared void according to law prior to June 8, 1898, shall be deemed and held as of the same force and effect as if the will or codicil had been duly proved and admitted to probate and record pursuant to sections 19-301 to 19-303. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1; 1973 Ed., § 14-504.)

References in text. — Sections 19-301 to 19-303, referred to at the end of this section, were repealed by the Act of September 14, 1965, 79 Stat. 780, Pub. L. 89-183, § 8.

§ 14-505. Municipal ordinances and regulations.

Municipal ordinances and regulations in force in the District of Columbia may be proved by producing in evidence a copy thereof certified as provided by the Commissioner [Mayor]; and the certified copy is prima facie evidence of the due adoption and promulgation of the ordinances and regulations. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 143(6); 1973 Ed., § 14-505.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 14-506. Certified mail return receipts as prima facie evidence of delivery.

Return receipts for the delivery of certified mail which is utilized under any provision of law shall be received in the courts as prima facie evidence of delivery to the same extent as return receipts for registered mail. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1; 1973 Ed., § 14-506.)

§ 14-507. Other methods of proof.

This chapter does not prevent the proof of records or other documents by any method authorized by other laws or rules of court. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1; 1973 Ed., § 14-507.)

Sufficiency of authentication. — Documentary evidence must be authenticated before it will be admitted, but authentication need not be by direct proof; circumstantial evidence will

suffice under proper conditions. *Namerdy v. Generalcar*, App. D.C., 217 A.2d 109 (1966).

Cited in *Giles v. District of Columbia*, App. D.C., 548 A.2d 48 (1988).

CHAPTER 7. ABSENCE FOR SEVEN YEARS.

Sec.

14-701. Presumption of death.

14-702. Person presumed dead found living.

§ 14-701. Presumption of death.

If a person leaves his domicile without a known intention of changing it, and does not return or is not heard from for seven years from the time of his so leaving, he shall be presumed to be dead in any case where his death is in question, unless proof is made that he was alive within that time. (Dec. 23, 1963, 77 Stat. 522, Pub. L. 88-241, § 1; 1973 Ed., § 14-701.)

Cross references. — As to administration of estates of absentees and absconders, see Chapter 19 of Title 21.

Section references. — This section is referred to in §§ 6-211 and 14-702.

Intention to change domicile established. — In action wherein beneficiary under insured's life policy sought declaration that insured was legally dead on the basis of the

presumption established in this section, evidence, tending to show that the insured had ample and sufficient reason for leaving his family, disappearing from and not communicating with them, warranted finding that the insured departed with the intention of changing his domicile. *Sulkie v. Metropolitan Life Ins., Co.*, App. D.C., 336 A.2d 830 (1975).

§ 14-702. Person presumed dead found living.

If the person presumed to be dead pursuant to section 14-701 is found to be living, a person injured by the presumption shall be restored to the rights of which he was deprived by reason of the presumption. (Dec. 23, 1963, 77 Stat. 522, Pub. L. 88-241, § 1; 1973 Ed., § 14-702.)

TITLE 15. JUDGMENTS AND EXECUTIONS; FEES AND COSTS.

Chapter

1. Judgments and Decrees..... §§ 15-101 to 15-133.
3. Enforcement of Judgments and Decrees..... §§ 15-301 to 15-357.
5. Exemptions and Trial of Right to Seized Property... §§ 15-501 to 15-524.
7. Fees and Costs..... §§ 15-701 to 15-718.

CHAPTER 1. JUDGMENTS AND DECREES.

Sec.	Sec.
15-101. Enforceable period of judgments; expiration.	15-107. Setting off judgments.
15-102. Lien of judgment, decree, or forfeited recognizance.	15-108. Interest on judgment for liquidated debt.
15-103. Effect of revival.	15-109. Interest on judgment for damages in contract or tort.
15-104. Priority of liens.	15-110. Interest on judgment on contracts made elsewhere.
15-105. Decree confirming sale of property; effect; ordering conveyance.	15-111. Counsel fee in proceeding on bond or undertaking.
15-106. Judgment and damages assessed in actions on bonds or penal sums.	15-131 to 15-133. [Repealed].

§ 15-101. Enforceable period of judgments; expiration.

(a) Except as provided by subsection (b) of this section, every final judgment or final decree for the payment of money rendered in the —

- (1) United States District Court for the District of Columbia; or
- (2) Superior Court of the District of Columbia,

when filed and recorded in the office of the Recorder of Deeds of the District of Columbia, is enforceable, by execution issued thereon, for the period of twelve years only from the date when an execution might first be issued thereon, or from the date of the last order of revival thereof. The time during which the judgment creditor is stayed from enforcing the judgment, by written agreement filed in the case, or other order, or by the operation of an appeal, may not be computed as a part of the period within which the judgment is enforceable by execution.

(b) At the expiration of the twelve-year period provided by subsection (a) of this section, the judgment or decree shall cease to have any operation or effect. Thereafter, except in the case of a proceeding that may be then pending for the enforcement of the judgment or decree, action may not be brought on it, nor may it be revived, and execution may not issue on it. (Dec. 23, 1963, 77 Stat. 522, Pub. L. 88-241, § 1; Nov. 2, 1966, 80 Stat. 1177, Pub. L. 89-745, §§ 1(a), 7; Mar. 11, 1968, 82 Stat. 42, Pub. L. 90-263, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(1); 1973 Ed., § 15-101.)

Cross references. — As to enforcement of foreign judgments, see § 12-307.

As to interest on judgments, see §§ 15-108 to 15-110.

As to action of account, see § 16-101.

As to entering of interlocutory or final decrees in adoption proceedings, see § 16-309.

Section references. — This section is referred to in §§ 16-578 and 30-515.

Life of recorded and unrecorded judg-

ments is equal under this section. *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

Twelve-year time period is statute of limitation rather than limitation on jurisdiction of the Superior Court. *Mayo v. Mayo*, App. D.C., 508 A.2d 114 (1986).

Effect of Social Services Amendments Act. — The period in which a judgment is in force is unaffected by a judgment debtor's wages being immune from garnishment, and therefore the effect of the Social Services Amendments Act of 1974 is irrelevant to the application of this section. *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

Child support payment. — Each child support payment becomes a separate judgment as of the date the payment falls due and the life of each judgment is the 12-year period specified in this section, irrespective of whether the judgments are or are not recorded. *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979); *Jasper v. Carter*, App. D.C., 451 A.2d 46 (1982); *District of Columbia ex rel. Faulkner v. Tinsley*, 118 WLR 2202 (Super. Ct. 1990).

Support arrearages under divorce decree become money judgments as they become due. — Like support arrearages under a divorce decree, support arrearages under a consent order ripen into money judgments as they become due and payable; each arrearage becomes a separate judgment as of the day payment falls due and the life of each judgment is 12 years. *Padgett v. Padgett*, App. D.C., 472 A.2d 849 (1984).

Each weekly payment of support arrearages became a judgment when it became due and payable, and therefore, the sum which accrued for more than twelve (12) years when the defendant failed to pay cannot be enforced by a court order. *Jolly v. Jolly*, 119 WLR 621 (Super. Ct. 1991).

Where defendant failed to pay support arrearages for over 12 years, the child support arrearages which had accrued prior to the 12-year statute of limitations must be subtracted from the total arrearage due. *Jolly v. Jolly*, 119 WLR 621 (Super. Ct. 1991).

Since the custodial parent did not seek to enforce the payment of arrears in this case until Oct. 2, 1990, any sum that became due

and payable before Oct. 2, 1978, could not be enforced by the Court. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

Motion for reduction of arrearage in support and maintenance payments. — A husband who, at the time of his divorce, did not raise the statute of limitations as a defense to a claim of arrearage exceeding 12 years in support and maintenance payments, could not rely upon the statute as a defense in a subsequent motion for reduction of the arrearage. *Mayo v. Mayo*, App. D.C., 508 A.2d 114 (1986).

Laches is viable defense in actions for support arrearages (under a consent order) which have ripened into money judgments. *Padgett v. Padgett*, App. D.C., 472 A.2d 849 (1984).

While in principle laches is a viable defense in actions for support arrearages which have ripened into money judgments, where the mother did not have the money to consult an attorney to file a contempt motion there was nothing unreasonable in the conduct of the mother in failing to bring a contempt motion for over 12 years, and laches should not be invoked. *Jolly v. Jolly*, 119 WLR 621 (Super. Ct. 1991).

If the mother is derelict in seeking child support, this should not preclude obtaining child support by the defense of laches, where the children are still minors and in need of support from their noncustodial father and the fact that they are grown should not alter this rationale. *Jolly v. Jolly*, 119 WLR 621 (Super. Ct. 1991).

Collection agency practices. — Where certain collection agency practices are terminated as being unauthorized practices of law, but where these practices had been long carried on without judicial disapproval and enforced under judgments which had been valid when rendered, the decision terminating such practices will not be applied retroactively. *Kelly Adjustment Co. v. Boyd*, App. D.C., 342 A.2d 361 (1975).

Cited in *Federal Express Servs. Corp. v. American Fed'n of Community Credit Unions, Inc.*, 114 WLR 873 (Super. Ct. 1986); *D.C. v. P.L.*, 118 WLR 1729 (Super. Ct. 1990).

§ 15-102. Lien of judgment, decree, or forfeited recognition.

(a) Each —

(1) final judgment or decree for the payment of money rendered in the United States District Court for the District of Columbia, or the Superior Court of the District of Columbia, from the date such judgment or decree is filed and recorded in the office of the Recorder of Deeds of the District of Columbia, and

(2) recognizance taken by the United States District Court for the District of Columbia, or the Superior Court of the District of Columbia, from the date the entry or order of forfeiture of such recognizance is filed and recorded in the office of the Recorder of Deeds of the District of Columbia, shall constitute a lien on all the freehold and leasehold estates, legal and equitable, of the defendants bound by such judgment, decree, or recognizance, in any land, tenements, or hereditaments in the District of Columbia, whether the estates are in possession or are reversions or remainders, vested or contingent. Such liens on equitable interest may be enforced only by an action to foreclose.

(b) Liens created as provided by this section continue as long as the judgment, decree, or recognizance is in force or until it is satisfied or discharged. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1; Nov. 2, 1966, 80 Stat. 1177, Pub. L. 89-745, §§ 2, 7; Mar. 11, 1968, 82 Stat. 42, Pub. L. 90-263, § 2; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(2); 1973 Ed., § 15-102.)

Cross references. — As to priority of purchase money lien, see § 15-104.

As to period during which writ of execution may be issued or returned, see § 15-302.

As to executions on forfeited recognizances and judgments, see § 16-709.

As to fees of Recorder of Deeds, see § 45-909.

Section references. — This section is referred to in § 45-909.

Purchase option accompanying lease is not a legal or equitable estate in land within subsection (a) of this section. *Harris v. Wagshal*, App. D.C., 343 A.2d 283 (1975).

Effective date of lien. — Judgment creditor's lien on the debtor's real property is valid

as of the date the judgment is recorded in the office of the District of Columbia Recorder of Deeds, even though further court procedures may be required to obtain or sell the debtor's realty to satisfy the lien. *Consumers United Ins. Co. v. Smith*, App. D.C., 644 A.2d 1328 (1994).

Cited in *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979); *Hoban v. Washington Metro. Area Transit Auth.*, 841 F.2d 1157 (D.C. Cir. 1988); *Lonon v. Board of Dirs.*, App. D.C., 535 A.2d 1386 (1988); *District of Columbia ex rel. Blackwell v. Jackson*, 119 WLR 609 (Super. Ct. 1991).

§ 15-103. Effect of revival.

An order of revival issued upon a judgment or decree during the period of twelve years from the rendition or from the date of an order reviving the judgment or decree, extends the effect and operation of the judgment or decree with the lien thereby created and all the remedies for its enforcement for the period of twelve years from the date of the order. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1; 1973 Ed., § 15-103.)

Cross references. — As to levy of attachment upon specific property as prerequisite to condemnation and sale, see § 16-555.

Cited in *Jasper v. Carter*, App. D.C., 451 A.2d 46 (1982); *Mayo v. Mayo*, App. D.C., 508 A.2d 114 (1986).

§ 15-104. Priority of liens.

The lien of a mortgage or deed of trust upon real property, given by the purchaser to secure the payment of the whole or any part of the purchase-money, is superior to that of a previous judgment or decree against the purchaser. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1; 1973 Ed., § 15-104.)

As between purchase-money mortgagee and construction lender standing in place of mechanic's lienor, the equitable considerations weigh in favor of the purchase-money

mortgagee who is powerless to prevent a mechanic's lien from attaching to his security. Guardian Fed. Sav. & Loan Ass'n v. Suskind, App. D.C., 265 A.2d 295 (1970).

§ 15-105. Decree confirming sale of property; effect; ordering conveyance.

A decree confirming the sale of real or personal property sold pursuant to a decree, divests the right, title, or interest sold out of the former owner, party to the action, and vests it in the purchaser, without any conveyance by the officer or agent of the court conducting the sale. The decree constitutes notice to all persons of the transfer of title when a copy thereof is registered among the land-records of the District. In particular cases, the court may order its officer or agent to make a conveyance, if that mode is deemed preferable. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1; 1973 Ed., § 15-105.)

Cross references. — As to deficiency decrees in cases of mortgage foreclosures, see § 45-716.

§ 15-106. Judgment and damages assessed in actions on bonds or penal sums.

(a) In a civil action on a bond or on a penal sum for the nonperformance of covenants or agreements contained in an indenture, deed, or writing, the plaintiff may assign as many breaches as he chooses. Damages shall be assessed for such breaches as he proves and judgment rendered for the whole penalty, but execution shall issue for as much only as is found in damages, with costs.

(b) In an action brought under subsection (a) of this section, upon judgment for the plaintiff on motion, default, or confession, the plaintiff may assign as many breaches as he chooses, the truth of which shall be determined. The damages shall be assessed and execution shall issue for such damages only, with costs.

(c) Payment into court, after entry of judgment and prior to the issuance of execution, of the amount of the damages and costs assessed, for the use of the plaintiff or his representatives, stays execution, and the stay shall be entered on the record. Payment to the plaintiff or his representatives, after execution, of the amount of the damages and costs assessed, together with all fees and other reasonable costs of execution, forthwith discharges the defendant's real and personal property from execution, and the discharge shall be entered on the record. However, the judgment shall remain as a security to the plaintiff or his representatives for any other breaches which he or they afterwards prove. From time to time, the plaintiff may, by motion and hearing, with reasonable notice to the defendant, assign other breaches, and damages shall be assessed for such breaches as he proves, with costs. Payment into court, before execution, or to the plaintiff or his representative, after execution, as herein described, has the same effect as hereinbefore directed.

(d) In proceedings under this section, the right of trial by jury, as to issues of fact and the amount of damages to be assessed, is preserved.

(e) This section is subject to section 28-2502 of this Code and to section 1874 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1; Aug. 30, 1964, 78 Stat. 677, Pub. L. 88-509, § 3(a); 1973 Ed., § 15-106.)

§ 15-107. Setting off judgments.

Where reciprocal claims between different parties have passed into judgments the court, on motion, may order that the judgments be set off against each other and satisfaction of both be entered to the amount of the smaller claim. (Dec. 23, 1963, 77 Stat. 524, Pub. L. 88-241, § 1; 1973 Ed., § 15-107.)

§ 15-108. Interest on judgment for liquidated debt.

In an action in the United States District Court for the District of Columbia or the Superior Court of the District of Columbia to recover a liquidated debt on which interest is payable by contract or by law or usage the judgment for the plaintiff shall include interest on the principal debt from the time when it was due and payable, at the rate fixed by the contract, if any, until paid. (Aug. 30, 1964, 78 Stat. 677, Pub. L. 88-509, § 3(b)(1); July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(3); 1973 Ed., § 15-108.)

Similarity of section to common law. — The language of this section mandates an award of interest if the debt is liquidated, as does the common law. *Giant Food, Inc. v. Jack I. Bender & Sons*, App. D.C., 399 A.2d 1293 (1979).

Section 15-109 is inconsistent with this section to the extent that it authorizes interest only on the judgment from the date of judgment, rather than on the principal amount due from the date due until the date paid. *Giant Food, Inc. v. Jack I. Bender & Sons*, App. D.C., 399 A.2d 1293 (1979).

Prejudgment interest allowed as matter of law. — This section requires the allowance of prejudgment interest on liquidated debts as a matter of law. *Giant Food, Inc. v. Jack I. Bender & Sons*, App. D.C., 399 A.2d 1293 (1979).

Distinction between prejudgment interest and interest on judgment eliminated. — This section eliminates the traditional distinction between prejudgment interest and interest on the judgment itself in cases involving a liquidated debt where interest is payable by contract law or usage. *Giant Food, Inc. v. Jack I. Bender & Sons*, App. D.C., 399 A.2d 1293 (1979).

Purpose of imposing interest. — Interest is not imposed on a debtor's obligation in order to exact a penalty; it is imposed to compensate the creditor for the loss of the use of its money. *District of Columbia v. Potomac Elec. Power Co.*, App. D.C., 402 A.2d 430 (1979).

The purpose to be served in awarding interest is as compensation allowed by law for the use or forbearance of money or as damages for its improper retention. *Giant Food, Inc. v. Jack I. Bender & Sons*, App. D.C., 399 A.2d 1293 (1979).

Basis for award of interest. — Where there was no evidence that any of the defendants ever agreed to pay interest, there was no basis in contract, law, or usage for an award of prejudgment interest. *International Limousine Serv., Inc. v. Ritz-Carlton of D.C., Inc.*, 117 WLR 1367 (Super. Ct. 1989).

Contractual rate of interest controls. — Under this section the rate of interest agreed upon and fixed by the parties in the contract controls, rather than the statutory rate of interest specified in § 28-3302. *Giant Food, Inc. v. Jack I. Bender & Sons*, App. D.C., 399 A.2d 1293 (1979).

Prejudgment interest. — A court has the power to award optional prejudgment interest in a contract liquidated damages case. *Riggs Nat'l Bank v. Carl G. Rosinski Co.*, App. D.C., 596 A.2d 997 (1991).

This section designates the situations where prejudgment interest is mandatory; § 15-109 makes provision for optional award of such interest. *Riggs Nat'l Bank v. Carl G. Rosinski Co.*, App. D.C., 596 A.2d 997 (1991).

Fault or innocence of debtor. — If a debt is a liquidated one which meets the requisites of this section, then prejudgment interest shall

be awarded regardless of the fault or innocence of the debtor. *District of Columbia v. Potomac Elec. Power Co.*, App. D.C., 402 A.2d 430 (1979).

Liquidated debt defined. — A liquidated debt is one which at the time it arose was an easily ascertainable sum certain. Even where a bona fide dispute exists as to a debt, courts generally find the liquidated nature of the debt unaffected. *District of Columbia v. Pierce Assocs.*, App. D.C., 527 A.2d 306 (1987).

Liquidated debt not established. — Testimony at trial on varying broker's fees available precludes the conclusion that the broker's fees determined by the jury were easily ascertainable and constituted a "liquidated debt" as contemplated by this section. *Regional Redevelopment Corp. v. Hoke*, App. D.C., 547 A.2d 1006 (1988).

Damages for conversion cannot be regarded as a liquidated debt, especially when both the date of conversion and the value of the converted property are in dispute. *Duggan v. Keto*, App. D.C., 554 A.2d 1126 (1989).

The statutory limit on prejudgment interest expressed in § 28-3302 applies with equal force to both liquidated and unliquidated sums under this section and § 15-109. Just as the trial court cannot award interest at a rate greater than 6% under this section, it also cannot under § 15-109 unless an express contractual provision is to the contrary. *District of Columbia v. Pierce Assocs.*, App. D.C., 527 A.2d 306 (1987).

Whether an unliquidated counterclaim bars interest on a liquidated debt depends on the extent of the plaintiff's breach, the conduct of the 2 parties, and other surrounding circumstances of the transaction. *Giant Food, Inc. v. Jack I. Bender & Sons*, App. D.C., 399 A.2d 1293 (1979).

Where unliquidated counterclaim is asserted against liquidated claim, interest is allowed only on the difference between the amount of the plaintiff's liquidated claim and the amount of defendant's counterclaim. *Giant Food, Inc. v. Jack I. Bender & Sons*, App. D.C., 399 A.2d 1293 (1979).

In interpleader actions interest need not be automatically allowed; an award should depend on equitable considerations. *Powers v. Metropolitan Life Ins. Co.*, 439 F.2d 605 (D.C. Cir. 1971).

Section requires that prejudgment interest be paid on accrued, but illegally denied, pension benefits. *Kiser v. Huge*, 517 F.2d 1237 (D.C. Cir. 1974), *aff'd* in part and *rev'd* in part on rehearing sub nom. *Pete v. United Mine Workers Welfare & Retirement Fund of 1950*, 517 F.2d 1275 (D.C. Cir. 1975).

Timing of request for interest is not a statutory requirement of this section and a

party is not barred from recovering interest pursuant to this section even if it was not demanded in the pleadings. *Strand v. Frenkel*, 115 WLR 2205 (Super. Ct. 1985).

Date from which interest runs on notes. — Unless there are overriding equitable considerations, interest is to be paid on notes from the date the last payment was payable rather than from the date of demand. *Toomey v. Cammack*, App. D.C., 379 A.2d 700 (1977).

Contract, law or usage required. — Where interest is not "payable by contract or by law or usage", plaintiff could not recover interest. *Kingston Constructors, Inc. v. Washington Metro. Area Transit Auth.*, 860 F. Supp. 886 (D.D.C. 1994).

Legally withheld payment under contract not deemed liquidated debt. — Where a contract authorizes one of the parties to deduct the amount of any claim from payment due the other party and where withholding a certain payment under the contract is legally justified, such a payment is not a liquidated debt "due and payable" within the meaning of this section until any contract litigation is concluded. *District Concrete Co. v. Bernstein Concrete Corp.*, App. D.C., 418 A.2d 1030 (1980).

Cited in *General Ry. Signal Co. v. Washington Metro. Area Transit Auth.*, 664 F.2d 296 (D.C. Cir. 1980); *United States Indus., Inc. v. Blake Constr. Co.*, 671 F.2d 539 (D.C. Cir. 1982); *Hartford Accident & Indem. Co. v. District of Columbia*, App. D.C., 441 A.2d 969 (1982); *National Souvenir Ctr., Inc. v. Historic Figures, Inc.*, 728 F.2d 503 (D.C. Cir.), *cert. denied*, 469 U.S. 825, 105 S. Ct. 103, 83 L. Ed. 2d 48 (1984); *Blair v. Norwegian Caribbean Lines*, 622 F. Supp. 21 (D.D.C. 1985); *Williams v. Williams*, App. D.C., 495 A.2d 754 (1985); *Baccus v. Franklin Inv. Co.*, 114 WLR 745 (Super. Ct. 1986); *Graham, Van Leer & Elmore Co. v. Jones & Wood, Inc.*, 656 F. Supp. 667 (D.D.C. 1987); *Sayan v. Riggs Nat'l Bank*, App. D.C., 544 A.2d 267 (1988); *Curtis v. Radio Representatives, Inc.*, 696 F. Supp. 729 (D.D.C. 1988); *General Ry. Signal v. Washington Metro. Area Transit Auth.*, 875 F.2d 320 (D.C. Cir. 1989), *cert. denied*, 494 U.S. 1056, 110 S. Ct. 1524, 108 L. Ed. 2d 764 (1990); *Kuwait Airways Corp. v. American Sec. Bank*, 890 F.2d 456 (D.C. Cir. 1989); *Williams v. Williams*, App. D.C., 554 A.2d 791 (1989); *Harbor Ins. Co. v. Omni Constr., Inc.*, 912 F.2d 1520 (D.C. Cir. 1990); *Riggs Nat'l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990); *Waverly Taylor, Inc. v. Polinger*, App. D.C., 583 A.2d 179 (1990); *Williams Enters., Inc. v. Sherman R. Smoot Co.*, 938 F.2d 230 (1991); *Askin v. Dustin*, 122 WLR 2053 (Super. Ct. 1994).

§ 15-109. Interest on judgment for damages in contract or tort.

In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgment only. This section does not preclude the jury, or the court, if the trial be by the court, from including interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. In an action to recover damages for a wrong the judgment for the plaintiff shall bear interest. (Aug. 30, 1964, 78 Stat. 677, Pub. L. 88-509, § 3(b)(1); 1973 Ed., § 15-109.)

This section is inconsistent with § 15-108 to the extent that it authorizes interest only on the judgment from the date of judgment, rather than on the principal amount due from the date due until the date paid. *Giant Food, Inc. v. Jack I. Bender & Sons*, App. D.C., 399 A.2d 1293 (1979).

Application of section. — This section is applicable to contract actions where no liquidated debt exists or where interest is not payable by contract or by law or usage. *Giant Food, Inc. v. Jack I. Bender & Sons*, App. D.C., 399 A.2d 1293 (1979).

Where parties enter into a contractual arrangement in the District, future transactions take place within the District and both parties work in the District, this section will be applied in any subsequent litigation, despite a choice of law provisions to the contrary in the agreement. *E.F. Hutton & Co. v. Burkholder*, 413 F. Supp. 852 (D.D.C. 1976).

This section was not applicable to a case arising under a contract, since it applies only in breach of contract cases. *Washington Metro. Area Transit Auth. v. Nello L. Teer Co.*, App. D.C., 618 A.2d 128 (1992).

General rule is that prejudgment interest in contract cases is not favored. *Blake Constr. Co. v. C.J. Coakley Co.*, App. D.C., 431 A.2d 569 (1981).

The 1st sentence of this section expresses the general rule that where the damages are unliquidated, interest runs only from the date of judgment. *Edmund J. Flynn Co. v. LaVay*, App. D.C., 431 A.2d 543 (1981).

This section generally limits interest to the post-judgment period. *Schneider v. Lockheed Aircraft Corp.*, 658 F.2d 835 (D.C. Cir. 1981), cert. denied, 455 U.S. 994, 102 S. Ct. 1622, 71 L. Ed. 2d 855 (1982).

The general rule of this section is that interest on damages for a breach of contract claim runs only from the date of judgment, and that prejudgment interest is therefore usually unavailable in breach of contract cases involving unliquidated claims; however, this section also contains an exception which allows the factfinder, in the exercise of its discretion, author-

ity to award prejudgment interest in cases involving unliquidated claims if necessary to fully compensate the plaintiff. The trial court has broad discretion in awarding such prejudgment interest under this section if necessary in the interest of justice; but this discretionary equitable power extends only to the fixing of the effective date, not rate, of such interest in contract cases in which the debt is unliquidated. *District of Columbia v. Pierce Assocs.*, App. D.C., 527 A.2d 306 (1987).

This section authorizes post-judgment interest in both tort and contract cases, but authorizes prejudgment interest only in contract cases. On the other hand, there is nothing in this section that prohibits an award of prejudgment interest in tort actions. *Duggan v. Keto*, App. D.C., 554 A.2d 1126 (1989); *Riggs Nat'l Bank v. Carl G. Rosinski Co.*, App. D.C., 596 A.2d 997 (1991).

Prejudgment interest. — A court has the power to award optional prejudgment interest in a contract liquidated damages case. *Riggs Nat'l Bank v. Carl G. Rosinski Co.*, App. D.C., 596 A.2d 997 (1991).

Section 15-108 designates the situations where prejudgment interest is mandatory; this section makes provision for optional award of such interest. *Riggs Nat'l Bank v. Carl G. Rosinski Co.*, App. D.C., 596 A.2d 997 (1991).

Exception to general rule. — The 2nd sentence of this section allows the general rule to be overridden where an award of interest is necessary in order to compensate the plaintiff fully. *Edmund J. Flynn Co. v. LaVay*, App. D.C., 431 A.2d 543 (1981).

Rate of interest. — Absent an express contractual provision to the contrary, a court may not award prejudgment interest greater than that allowed by § 28-3302. *General Ry. Signal v. Washington Metro. Area Transit Auth.*, 875 F.2d 320 (D.C. Cir. 1989), cert. denied, 494 U.S. 1056, 110 S. Ct. 1524, 108 L. Ed. 2d 764 (1990).

Accrual of interest. — This section was applicable to a contract dispute in which the equitable adjustment provision of the contract imposed a contractual duty on Washington Metropolitan Area Transportation Authority

which it allegedly breached by withholding an excessive amount of progress payments thus ruling that interest would run from the date on which WMATA's general manager finally decided to withhold the funds was upheld. *General Ry. Signal v. Washington Metro. Area Transit Auth.*, 875 F.2d 320 (D.C. Cir. 1989), cert. denied, 494 U.S. 1056, 110 S. Ct. 1524, 108 L. Ed. 2d 764 (1990).

Prejudgment interest is not limited to cases where clear contractual relationship exists; furthermore, the claim need not be liquidated under this section in order to support an award of prejudgment interest. *House of Wines, Inc. v. Sumter*, App. D.C., 510 A.2d 492 (1986).

Factors that weigh against award of prejudgment interest. — Uncertainty as to amount due the prevailing party and lapse of time between trial and judgment are factors that weigh against the award of prejudgment interest under this section. *E.F. Hutton & Co. v. Burkholder*, 413 F. Supp. 852 (D.D.C. 1976).

No prejudgment interest awarded in tort actions. — Neither common law nor the District of Columbia Code provides for the award of prejudgment interest in tort actions in the District of Columbia. *Schneider v. Lockheed Aircraft Corp.*, 658 F.2d 835 (D.C. Cir. 1981), cert. denied, 455 U.S. 994, 102 S. Ct. 1622, 71 L. Ed. 2d 855 (1982).

Inclusion of interest in damage award upheld. — The inclusion of interest charged for borrowing money to replace a defective furnace as a part of a damage award in a breach of warranty action is not an abuse of discretion. *Noel v. O'Brien*, App. D.C., 270 A.2d 350 (1970).

It would be difficult to deny prejudgment interest on accrued, but illegally withheld, pension benefits as an exercise of equitable discretion. *Kiser v. Huge*, 517 F.2d 1237 (D.C. Cir. 1974), aff'd in part and rev'd in part on rehearing sub nom. *Pete v. United Mine Workers Welfare & Retirement Fund of 1950*, 517 F.2d 1275 (D.C. Cir. 1975).

Where issue of prejudgment interest is not argued at trial and where no evidence is submitted on the question, it is inappropriate to later seek such interest on appeal. *Emersons Ltd. v. Max Wolman Co.*, 388 F. Supp. 729 (D.D.C. 1975), aff'd, 530 F.2d 1093 (D.C. Cir. 1976).

Delays in processing claims. — Unreasonable delay by contracting officer in processing claims for extra work constituted a breach of contract and rendered the contractor eligible for a discretionary award of interest under this section from the time, after completion of the work, when he first requested payment until owner made final payment. *Granite-Groves v. Washington Metro. Area Transit Auth.*, 845 F.2d 330 (D.C. Cir. 1988).

Express determination of finality is required before interest may accrue on a judgment entered while 3rd-party claims remain pending. *Hooks v. Washington Sheraton Corp.*, 642 F.2d 614 (D.C. Cir. 1980).

Court has wide discretion in awarding prejudgment interest. — Under statute, the trial court operates within a wide range of discretion in awarding prejudgment interest. *Edmund J. Flynn Co. v. LaVay*, App. D.C., 431 A.2d 543 (1981).

Court of Appeals Rule 37 application need not be made in order for interest to be awarded and a trial court has jurisdiction to render such an award when the Court of Appeals' mandate is silent on the question of interest. *Strand v. Frenkel*, 115 WLR 2205 (Super. Ct. 1985).

The statutory limit on prejudgment interest expressed in § 28-3302 applies with equal force to both liquidated and unliquidated sums under this section and § 15-108. — Just as the trial court cannot award interest at a rate greater than 6% under § 15-108, it also cannot under this section unless an express contractual provision is to the contrary. *District of Columbia v. Pierce Assocs.*, App. D.C., 527 A.2d 306 (1987).

Interest on plaintiff's judgment vacated by trial court, but reinstated after appeal by a mandate that did not mention interest, shall run from the date of the verdict and original judgment rather than from the date the verdict and judgment were reinstated. *Bell v. Westinghouse Elec. Corp.*, App. D.C., 507 A.2d 548 (1986).

Judgment accepted and marked paid and satisfied. — Where the judgment had been marked paid and satisfied and the claimant had accepted the benefit of a lump sum jury award for which prejudgment interest — applicable at best only to an unknown portion of the award — no longer can be calculated without reopening a settled award, he is estopped from pursuing the prejudgment interest issue on appeal. *George Hyman Constr. Co. v. Di Nicola*, App. D.C., 514 A.2d 1180 (1986).

Cited in *Seitzinger's, Inc. v. National Bank*, 490 F. Supp. 340 (D.D.C. 1980); *General Ry. Signal Co. v. Washington Metro. Area Transit Auth.*, 664 F.2d 296 (D.C. Cir. 1980); *Reiman & Co. v. Eromanga Invs.*, 622 F. Supp. 13 (D.D.C. 1985); *Baccus v. Franklin Inv. Co.*, 114 WLR 745 (Super. Ct. 1986); *Warren v. Chapman*, App. D.C., 535 A.2d 856 (1987); *Kuwait Airways Corp. v. American Sec. Bank*, 890 F.2d 456 (D.C. Cir. 1989); *Nello L. Teer Co. v. Washington Metro. Area Transit Auth.*, 921 F.2d 300 (D.C. Cir. 1990); *Waverly Taylor, Inc. v. Polinger*, App. D.C., 583 A.2d 179 (1990).

§ 15-110. Interest on judgment on contracts made elsewhere.

In an action on a contract for the payment of a higher rate of interest than is lawful in the District, made or to be performed in a State or territory of the United States where such a contract rate of interest is lawful, the judgment for the plaintiff shall include the contract interest to the date of the judgment and interest thereafter at the rate of 6 per cent per annum until paid. (Aug. 30, 1964, 78 Stat. 678, Pub. L. 88-509, § 3(b)(1); 1973 Ed., § 15-110.)

Cited in Finance Am. Corp. v. Moyler, App. D.C., 494 A.2d 926 (1985); Duggan v. Keto, App. D.C., 554 A.2d 1126 (1989).

§ 15-111. Counsel fee in proceeding on bond or undertaking.

In a proceeding in the United States District Court for the District of Columbia or the Superior Court of the District of Columbia to recover damages upon a bond or undertaking given to obtain a restraining order or preliminary or pendente lite injunction, the Court, in assessing damages to be recovered thereunder, may include such reasonable counsel fees as the party damaged by the restraining order or injunction may have incurred in obtaining a dissolution thereof. (Aug. 30, 1964, 78 Stat. 678, Pub. L. 88-509, § 3(b)(1); July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(3); 1973 Ed., § 15-111.)

Damages assessed on bond posted pursuant to agreement of parties. — It is contrary to public policy to deny a party the right to assess damages on the bond merely because it was posted pursuant to an agreement between the parties, which was approved by the

court without a hearing, rather than pursuant to a preliminary injunction issued after a hearing. Taylor v. Frenkel, App. D.C., 499 A.2d 1212 (1985).

Cited in Curry v. Sutherland, 111 WLR 1613 (Super. Ct. 1983).

§§ 15-131 to 15-133. Judgments and executions generally; interest; enforceable period of unrecorded judgments; enforcement of judgments, etc., of the District of Columbia Court of General Sessions; satisfaction of judgment; recordation.

Repealed. July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(4)(A).

CHAPTER 3. ENFORCEMENT OF JUDGMENTS AND DECREES.

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Subchapter I. Local Judgments and Decrees.

§ 15-301. Definition and applicability.

As used in sections 15-302, 15-303, 15-305 to 15-307, 15-309, 15-317, and 15-318, "judgment" includes an unconditional decree for the payment of money, and sections 15-302 to 15-318 are applicable to such a decree. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(6)(B); 1973 Ed., § 15-301.)

Collection agency practices. — Where certain collection agency practices are terminated as being unauthorized practices of law, but where these practices had been long carried on without judicial disapproval and enforced under judgments which had been valid when rendered, the decision terminating such prac-

tices will not be applied retroactively. *Kelly Adjustment Co. v. Boyd*, App. D.C., 342 A.2d 361 (1975).

Cited in *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979); *Jasper v. Carter*, App. D.C., 451 A.2d 46 (1982); *Lonon v. Board of Dirs.*, App. D.C., 535 A.2d 1386 (1988).

§ 15-302. Period during which writ of execution may issue; returnable period.

(a) A writ of execution on a judgment in a civil action may be issued within three years after:

- (1) the expiration of any stay of execution agreed to by the parties; or
- (2) it first might have been issued under applicable provisions of law or rules of court.

(b) A writ of execution shall be returnable on or before the sixtieth day after its date. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1; 1973 Ed., § 15-302.)

Cross references. — As to exemption of public assistance from assignment and execution, see § 3-217.1.

As to exemptions from executions generally, see Chapter 1 of this title.

As to executions on forfeited recognizances and judgments, see § 16-709.

As to exemption of wrongful death damages from appropriation for payment of debts and liabilities, see § 16-2703.

As to exemption of teacher retirement annuities from assignment or execution, see § 31-1217.

As to exemption of disability insurance benefits from execution, see § 35-522.

As to exemption of group life policies and proceeds from execution, see § 35-523.

As to exemption of fraternal benefit association benefits from execution, see § 35-1211.

As to enforcement of landlord's lien for rent by execution, see §§ 45-1414 and 45-1415.

As to payment of rent due as prerequisite to seizure by execution of goods located on leased premises, see § 45-1416.

As to exemption of unemployment compensation benefits from execution, except for debts accrued for necessities, see § 46-119.

Section references. — This section is referred to in §§ 15-301 and 15-303.

Design of section. — This section is designed to pretermitt the possibility of a stay preventing execution on the judgment during the prescribed 3-year period. *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

Unrecorded judgments. — This section does not govern the life of unrecorded judgments. *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

Writ of execution is the means by which a judgment is satisfied. *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

Writ ordering child support payments is not a "writ of execution," governed by this section and § 15-305, but a writ of attachment, governed by § 16-543. *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

Effect of Social Services Amendments Act. — The period in which a judgment is in force is unaffected by a judgment debtor's wages being immune from garnishment, and therefore the effect of the Social Services Amendments Act of 1974 is irrelevant to the application of this section. *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

§ 15-303. Alias writs.

If a writ of execution is issued and returned unsatisfied, in whole or in part, within the period of three years provided by section 15-302, an alias writ may be issued during the life of the judgment. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1; 1973 Ed., § 15-303.)

Section references. — This section is referred to in § 15-301.

Cited in *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

§ 15-304. Return of writ.

If the return of a writ of execution is not made on or before the return day expressed in the writ it may nevertheless be made afterwards as of that date. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1; 1973 Ed., § 15-304.)

Section references. — This section is referred to in § 15-301.

§ 15-305. Issuance of writ after expiration of period.

A writ of execution not issued within the time allowed therefor, may not be issued until the judgment has been revived. The same rule applies to the order of revival in relation to the issuance of a writ of execution as to the original judgment. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1; 1973 Ed., § 15-305.)

Cross references. — As to extension of lien of judgment, or decree by order of revival, see § 15-102.

Section references. — This section is referred to in § 15-301.

Writ ordering child support payments is not a "writ of execution," governed by § 15-302 and this section, but a writ of attachment, governed by § 16-543. *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

§ 15-306. Election to move for new judgment in lieu of execution.

During the life of the original judgment the plaintiff, instead of issuing execution thereon within the time allowed therefor, may elect to obtain a new judgment by motion and hearing as provided by rules of court. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1; 1973 Ed., § 15-306.)

Section references. — This section is referred to in § 15-301.

§ 15-307. Lien of execution.

A writ of fieri facias issued upon a judgment of the United States District Court for the District of Columbia or the Superior Court of the District of Columbia is a lien from the time of its delivery to the marshal upon all the goods and chattels of the judgment defendant, except those that are exempted from levy and sale by express provision of law, and is also a lien upon the equitable interest of the judgment defendant in goods and chattels in his possession. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(5); 1973 Ed., § 15-307.)

Section references. — This section is referred to in § 15-301.

Cited in *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

§ 15-308. Endorsement, by marshal, of date of receipt of writ.

Upon the receipt of any writ of fieri facias or other writ of execution, the marshal or his deputy shall, without fee, endorse upon the back of the writ the day of the month and year when he received it. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1; 1973 Ed., § 15-308.)

Section references. — This section is referred to in § 15-301.

Cited in *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

§ 15-309. Death of judgment debtor after delivery of execution.

The death of the judgment debtor after the execution issued on the judgment has been delivered to the marshal does not affect his authority to proceed against the property bound by it. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1; 1973 Ed., § 15-309.)

Section references. — This section is referred to in § 15-301.

§ 15-310. Lien of execution on Court of General Sessions judgment; levy.

Repealed. July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(6)(A).

§ 15-311. Property subject to levy.

The writ of fieri facias may be levied on all goods and chattels of the debtor not exempt from execution, and upon money, bills, checks, promissory notes, or bonds, or certificates of stock in corporations owned by the debtor, and upon his money in the hands of the marshal or his deputy or other officer or person charged with the execution of the writ. A writ of fieri facias issued from the United States District Court for the District of Columbia or the Superior Court of the District of Columbia upon a judgment entered in such court may be levied on all legal leasehold and freehold estates of the debtor in land, but only after such judgment has been filed and recorded in the office of the Recorder of Deeds of the District of Columbia. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1; July 5, 1966, 80 Stat. 264, Pub. L. 89-493, § 12; Nov. 2, 1966, 80 Stat. 1178, Pub. L. 89-745, § 5; Mar. 11, 1968, 82 Stat. 42, Pub. L. 90-263, § 3; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(7); 1973 Ed., § 15-311.)

Cross references. — As to exemption of notary's official seal and documents from execution, see § 1-806.

As to exemption of public assistance from assignment or execution, see § 3-217.1.

As to exemptions from executions generally, see Chapter 1 of this title.

As to exemption of wrongful death damages from appropriation for payment of debts and liabilities, see § 16-2703.

As to exemption of teacher retirement annuities from assignment or execution, see § 31-1217.

As to exemption of disability insurance benefits from execution, see § 35-522.

As to exemption of group life policies and proceeds from execution, see § 35-523.

As to exemption of fraternal benefit association benefits from execution, see § 35-1211.

As to payment of rent due as prerequisite to seizure by execution of goods located on leased premises, see § 45-1416.

As to exemption of unemployment compensation benefits from execution, except for debts accrued for necessities, see § 46-119.

Section references. — This section is referred to in § 15-301.

Effective date of lien. — Judgment creditor's lien on the debtor's real property is valid as of the date the judgment is recorded in the office of the District of Columbia Recorder of Deeds, even though further court procedures may be required to obtain or sell the debtor's realty to satisfy the lien. *Consumers United Ins. Co. v. Smith*, App. D.C., 644 A.2d 1328 (1994).

Cited in *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

§ 15-312. Levy on money and evidences of debt.

When the fieri facias is levied on money belonging to the judgment debtor the marshal may not expose the money to sale, but shall account for it as money collected. Bills or other evidences of debt levied upon shall be sold as other personal property is sold, and the marshal may indorse them to pass title to the purchaser. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1; 1973 Ed., § 15-312.)

Section references. — This section is referred to in § 15-301.

Cited in *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

§ 15-313. Levy on equitable interest in chattels pledged.

The interest of the debtor in personal chattels lawfully pledged for the payment of a debt or performance of a contract, or held by a trustee, and in which the debtor's interest is only equitable, may be levied upon in the hands of the pledgee or trustee without disturbing the possession of the latter, and the lien thus obtained may be enforced by civil action. In other cases of equitable interest of the judgment debtor in personal chattels execution may also be levied thereon and the lien thus obtained may be enforced by civil action. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1; 1973 Ed., § 15-313.)

Section references. — This section is referred to in § 15-301.

§ 15-314. Appraisement; notice of sale.

Where not herein otherwise provided, all property levied upon, except money, shall be appraised by two sworn appraisers and sold at public auction for cash.

Personal property may be sold after ten days' notice by advertisement, containing a description sufficiently definite to be embodied in a conveyance of title.

Leasehold and freehold estates in land may be sold after notice has been made in the manner provided by section 2002 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1; 1973 Ed., § 15-314.)

Section references. — This section is referred to in § 15-301.

§ 15-315. Death, removal, or disqualification of marshal.

When the marshal dies, or is removed from office, or becomes otherwise disqualified from executing a writ of execution received by him, the writ may be executed and returned by his deputy or successor in office. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1; 1973 Ed., § 15-315.)

Section references. — This section is referred to in § 15-301.

§ 15-316. Subrogation of purchaser after defective sale; no refund.

When, upon the sale of property under execution, the title of the purchaser is invalid by reason of a defect in the proceedings, the purchaser may be subrogated to the rights of the creditor against the debtor to the extent of the money paid by him and applied to the debtor's benefit, and to that extent has a lien on the property sold against all persons except bona fide purchasers without notice; but the creditor may not be required to refund the purchase money on account of the invalidity of the sale. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1; 1973 Ed., § 15-316.)

Section references. — This section is referred to in § 15-301.

§ 15-317. Remedy of marshal for erroneous sale made in good faith.

When the marshal or any other officer to whom execution has been delivered levies upon and sells in good faith property not subject thereto and applies the proceeds thereof toward the satisfaction of the judgment, and a recovery is had against him for its value, the officer, on payment of the value, may, on motion and due notice thereof to the defendant, have the satisfaction of the judgment vacated, and execution shall issue thereon for his use as if the levy and sale had not been made. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1; 1973 Ed., § 15-317.)

Section references. — This section is referred to in § 15-301.

§ 15-318. Remedies of purchaser upon refusal to deliver possession.

When real property is sold by virtue of an execution, and the judgment debtor or a person claiming under him since the rendition of the judgment is in actual possession of the property and refuses to deliver possession thereof to the purchaser upon demand made therefor, the court, on the application of the purchaser, may:

(1) require the person so in possession to show cause why possession should not be delivered according to the demand; and

(2) if good cause is not shown, issue a writ of habere facias possessionem, requiring the marshal to put the purchaser in possession.

If the party in possession alleges under oath a title derived from the judgment debtor prior to the judgment or a title superior to that of the defendant, the writ may not issue, but the purchaser may have his remedy by an action of ejectment or the summary remedy in the Superior Court of the District of Columbia provided for in sections 16-1501 to 16-1505. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(7); 1973 Ed., § 15-318.)

Section references. — This section is referred to in § 15-301.

Cited in Lomax v. Spriggs, App. D.C., 404 A.2d 943 (1979).

§ 15-319. Execution of final decree after death; other appropriate proceedings.

When a party to an action dies after final decree, the court may order execution of the decree as if death had not occurred, or the court, after motion and hearing, may order the decree revived against the proper representatives of the deceased party, or make such other order or direct such other proceedings as seems best calculated to advance the purposes of justice. The heir or other proper representative may appear at any time before execution of the

decree and be admitted as a party to the action, on such terms as the court prescribes, and such further proceeding may be had as may be appropriate to the merits of the cause. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1; 1973 Ed., § 15-319.)

§ 15-320. Enforcement of decrees.

(a) For the purpose of executing a decree, or compelling obedience to it, the United States District Court for the District of Columbia or the Superior Court of the District of Columbia, in addition to the other procedures provided for by this chapter and chapter 5 of Title 16, may:

- (1) issue an attachment against the person of the defendant;
- (2) order an immediate sequestration of his real and personal estate, or such part thereof as may be necessary to satisfy the decree; or
- (3) by order and injunction, cause the possession of the estate and effects whereof the possession or a sale is decreed to be delivered to the complainant, or otherwise, according to the tenor and import of the decree and as the nature of the case requires.

In case of sequestration, the court may order payment and satisfaction to be made out of the estate and effects so sequestered, according to the true intent and meaning of the decree.

(b) When a defendant is arrested and brought into court upon any process of contempt issued to compel the performance of a decree, the court may, upon motion, order:

- (1) the defendant to stand committed; or
- (2) his estates and effects to be sequestered and payment made, as directed by subsection (a) of this section; or
- (3) possession of his estate and effects to be delivered by order and injunction, as directed by subsection (a) of this section — until the decree or order is fully performed and executed, according to the tenor and true meaning thereof, and the contempt cleared.

(c) Where a decree only directs the payment of money, the defendant may not be imprisoned except in those cases especially provided for. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(7); 1973 Ed., § 15-320.)

Editor's notes. — Because of the codification of §§ 15-351 — 15-357 as subchapter II of this chapter, and the designation of the pre-existing text of Chapter 3 as subchapter I, "subchapter" should be substituted for "chapter" in the introductory language of (a).

Authority of Superior Court to compel payment of counsel fees. — Where a husband seeks an absolute divorce and is countersued for support and maintenance, the Superior Court has jurisdiction to hold him in contempt for nonpayment of counsel fees under § 16-911, despite the fact that the divorce is ultimately denied. *Edmonds v. Edmonds*, App. D.C., 212 A.2d 534 (1965).

The Superior Court has the authority to

imprison a husband to compel payment of his wife's counsel fees, pursuant to an order contained in a final decree of divorce in an action brought by the wife. *Thunberg v. Thunberg*, App. D.C., 233 A.2d 444 (1971).

Section prohibits commitment for failure to comply with support agreement. — Subsection (c) of this section prohibits commitment of a husband for his contemptuous failure to comply with an order for specific performance of his agreement to pay his wife monthly support payments. *O'Mara v. O'Mara*, App. D.C., 238 A.2d 586 (1968).

Imprisonment for debt disfavored. — The law generally disfavors imprisonment for debt, such as for failure to provide support for

one's family as ordered by the court in connection with divorce. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Considerations in determining contempt for failure to pay support. — In making the determination of civil contempt for failure to make support payments, the trial court considers all the circumstances of the case, including whether the defendant's asserted inability to pay is due to involuntary financial straits or a voluntary decision to reduce his or her income. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Court may order stay of imprisonment for contempt. — A court may order commit-

ment for contempt but stay imprisonment on the condition of compliance with reasonable, specific requirements. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Court must find ability to comply before revoking stay. — When the trial court has before it a motion for relief providing evidence of the contemnor's inability to comply with the terms of the stay of imprisonment for contempt, it must find that the contemnor is able to meet the terms of the stay before it may revoke the stay. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Cited in *Charles v. Charles*, App. D.C., 505 A.2d 462 (1986).

§ 15-321. Enforcement of interlocutory decrees.

An interlocutory order may be enforced by such process as might be had upon a final judgment or decree to the like effect, and the payment of costs adjudged to a party may be enforced in like manner. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88-241, § 1; 1973 Ed., § 15-321.)

§ 15-322. Enforcement of decrees for delivery of chattels.

In addition to the procedures for enforcement of judgments or decrees otherwise provided for, an order or decree for the delivery of chattels may be enforced by the same writs as are used in the action of replevin at common law. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88-241, § 1; 1973 Ed., § 15-322.)

§ 15-323. Limitation on seizure of real property.

Real property or rent shall not be seized for a debt, as long as the present goods and chattels of the debtor are sufficient to pay it, and the debtor himself is ready to satisfy the debt. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88-241, § 1; 1973 Ed., § 15-323.)

Subchapter II. Foreign Judgments.

§ 15-351. Definitions.

For the purposes of this subchapter, the term:

- (1) "District" means the District of Columbia.
- (2) "Foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in the District.
- (3) "Superior Court" means the Superior Court of the District of Columbia. (Oct. 2, 1990, D.C. Law 8-173, § 2(b), 37 DCR 5005.)

Legislative history of Law 8-173. — Law 8-173, the "Uniform Enforcement of Foreign Judgments Act of 1990," was introduced in

Council and assigned Bill No. 8-56, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings

on June 26, 1990, and July 10, 1990, respectively. Signed by the Mayor on July 18, 1990, it was assigned Act No. 8-240 and transmitted to both Houses of Congress for its review.

§ 15-352. Filing and status of foreign judgments.

A copy of any foreign judgment authenticated in accordance with the laws of the District may be filed in the Office of the Clerk of the Superior Court ("Clerk"). A foreign judgment filed with the Clerk shall have the same effect and be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner. (Oct. 2, 1990, D.C. Law 8-173, § 2(b), 37 DCR 5005.)

Legislative history of Law 8-173. — See note to § 15-351.

§ 15-353. Notice of filing.

(a) At the time of the filing of the foreign judgment, the judgment creditor or the judgment creditor's lawyer shall make and file with the Clerk an affidavit that sets forth the names and last known addresses of the judgment debtor and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the Clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and address or name and post office address of the judgment creditor and the judgment creditor's lawyer, if any, in the District. The judgment creditor may mail a notice of the filing of the foreign judgment to the judgment debtor and may file proof of mailing with the Clerk. Lack of mailing notice of filing by the Clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed. (Oct. 2, 1990, D.C. Law 8-173, § 2(b), 37 DCR 5005.)

Legislative history of Law 8-173. — See note to § 15-351.

§ 15-354. Stay.

(a) Upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which the judgment is rendered, and if the judgment debtor shows the Superior Court that an appeal from the foreign judgment is pending or shall be taken or that a stay of execution has been granted, the Superior Court shall stay enforcement of the foreign judgment until:

- (1) The appeal is concluded;
- (2) The time for appeal expires; or
- (3) The stay of execution expires or is vacated.

(b) If the judgment debtor shows the Superior Court any ground upon which enforcement of a judgment of the Superior Court would be stayed, the Superior Court shall stay enforcement of the foreign judgment for an appropriate period

upon requiring the same security for satisfaction of a judgment that is required in the District. (Oct. 2, 1990, D.C. Law 8-173, § 2(b), 37 DCR 5005.)

Legislative history of Law 8-173. — See note to § 15-351.

§ 15-355. Fees.

Any person filing a foreign judgment shall pay to the Clerk the fee established by the Superior Court. Fees for docketing, transcription, or other enforcement proceedings shall be as provided for judgments of the Superior Court. (Oct. 2, 1990, D.C. Law 8-173, § 2(b), 37 DCR 5005.)

Legislative history of Law 8-173. — See note to § 15-351.

§ 15-356. Optional procedure.

The right of a judgment creditor to bring an action to enforce a judgment in lieu of proceeding under this subchapter remains unimpaired. (Oct. 2, 1990, D.C. Law 8-173, § 2(b), 37 DCR 5005.)

Legislative history of Law 8-173. — See note to § 15-351.

§ 15-357. Uniformity of interpretation.

This subchapter shall be interpreted and construed to effectuate its general purpose to make uniform the law of jurisdictions that enact it. (Oct. 2, 1990, D.C. Law 8-173, § 2(b), 37 DCR 5005.)

Legislative history of Law 8-173. — See note to § 15-351.

CHAPTER 5. EXEMPTIONS AND TRIAL OF RIGHT TO SEIZED PROPERTY.

Subchapter I. Exemptions.

Sec.

- 15-501. Exempt property of householder; property in transitu; debt for wages.
- 15-502. Mortgage or other instrument affecting exempt property.
- 15-503. Earnings and other income; wearing apparel and tools of certain persons.

Subchapter II. Trial of Right to Property Seized on Process of Superior Court

Sec.

- 15-521. Notice of claim or exemption; trial.
- 15-522. Docketing of claim; manner of trial.
- 15-523. Judgment.
- 15-524. Replevin against officer.

Subchapter I. Exemptions.

§ 15-501. Exempt property of householder; property in transitu; debt for wages.

(a) The following property of the head of a family or householder residing in the District of Columbia, or of a person who earns the major portion of his livelihood in the District of Columbia, being the head of a family or householder, regardless of his place of residence, is free and exempt from distraint, attachment, levy, or seizure and sale on execution or decree of any court in the District of Columbia:

(1) all wearing apparel provided for all persons within the household, being members of the immediate family of the household, not exceeding \$300 per person in value;

(2) all beds, bedding, household furniture and furnishings, sewing machines, radios, stoves, cooking utensils, not exceeding \$300 in value;

(3) provisions for three months' support, whether provided or growing;

(4) fuel for three months;

(5) mechanics' tools and implements of the debtor's trade or business amounting to \$200 in value, with \$200 worth of stock or materials for carrying on the business or trade of the debtor;

(6) the library, office furniture, and implements of a professional man or artist, not exceeding \$300 in value;

(7) one horse or mule; one cart, wagon, or dray and harness, or one automobile or motor-controlled vehicle not exceeding \$500 in value if used principally by the debtor in his trade or business; and

(8) all family pictures; and all the family library, not exceeding \$400 in value.

The exemption provided for by clause (5) of this subsection also applies to merchants.

(b) The exemptions provided for by subsection (a) of this section are valid when the property is in transit, the same as if at rest; but property named and exempted in this section is not exempt from attachment or execution for a debt due for the wages of servants, common laborers, or clerks, except the wearing apparel, beds, and bedding and household furniture for the debtor and family.

(c) For the purpose of this section, the person who is the principal provider for the family is the head thereof. (Dec. 23, 1963, 77 Stat. 529, Pub. L. 88-241, § 1; 1973 Ed., § 15-501.)

Cross references. — As to exemption of notary's official seal and documents from execution, see § 1-806.

As to exemption of public assistance from assignment or execution, see § 3-217.1.

As to exemption of wrongful death damages from appropriation for payment of debts and liabilities, see § 16-2703.

As to exemption of teacher retirement annuities from assignment of execution, see § 31-1217.

As to exemption of disability insurance benefits from execution, see § 35-522.

As to exemption of group life policies and proceeds from execution, see § 35-523.

As to exemption of fraternal benefit association benefits from execution, see § 35-1211.

As to payment of rent due as prerequisite to seizure by execution of goods located on leased premises, see § 45-1416.

As to exemption of unemployment compensation benefits from execution, except for debts accrued for necessities, see § 46-119.

Section references. — This section is referred to in § 20-904.

Order denying motion to quash attachment is not final and hence not generally appealable, but such appeals may be heard whereby the possession of property is changed or affected. *Ludington v. Bogdanoff*, App. D.C., 256 A.2d 921 (1969).

Cited in D.C. v. P.L., 118 WLR 1729 (Super. Ct. 1990).

§ 15-502. Mortgage or other instrument affecting exempt property.

A mortgage, deed of trust, assignment for the benefit of creditors, or bill of sale upon exempted articles is not binding or valid unless it is signed by the spouse of a debtor who is married and living with his or her spouse. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1; 1973 Ed., § 15-502; Oct. 1, 1976, D.C. Law 1-87, § 11, 23 DCR 2544.)

Section references. — This section is referred to in § 20-904.

Legislative history of Law 1-87. — Law 1-87, the "Anti-Sex Discriminatory Language Act," was introduced in Council and assigned Bill No. 1-36, which was referred to the Com-

mittee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976 and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

§ 15-503. Earnings and other income; wearing apparel and tools of certain persons.

(a) The earnings (other than wages, as defined in subchapter III of chapter 5 of Title 16), insurance, annuities, or pension or retirement payments, not otherwise exempted, not to exceed \$200 each month, of a person residing in the District of Columbia, or of a person who earns the major portions of his livelihood in the District of Columbia, regardless of place of residence, who provides the principal support of a family, for two months next preceding the issuing of any writ or process against him, from any court or officer of and in the District, are exempt from attachment, levy, seizure, or sale upon the process, and may not be seized, levied on, taken, reached, or sold by process or proceedings of any court, judge, or other officer of and in the District. Where husband and wife are living together, the aggregate of the earnings, insurance, annuities, and pension or retirement payments of the husband and wife is the amount which shall be determinative of the exemption of either in cases arising *ex contractu*.

(b) The earnings (other than wages, as defined in subchapter III of chapter 5 of Title 16), insurance, annuities, or pension or retirement payments, not otherwise exempt, not to exceed \$60 each month for two months preceding the

date of attachment of persons residing in the District of Columbia, or of persons who earn the major portions of their livelihood in the District of Columbia, regardless of place of residence, who do not provide for the support of a family, are entitled to like exemption from attachment, levy, seizure, or sale. All wearing apparel belonging to such persons, not exceeding \$300 in value, and mechanic's tools not exceeding \$200 in value, are also exempt.

(c) Notwithstanding any other provision of law, the wages (as defined in section 16-571 of the District of Columbia Code) of any person not residing in the District of Columbia who does not earn the major portion of such wages in the District of Columbia shall, in any case arising out of a contract or transaction entered into outside of the District of Columbia, be exempt from attachment, levy, or seizure, by any process or proceeding of any court, judge, or officer of the District of Columbia in the same amount and to the same extent as is provided by law of the State in which such person resides for persons residing therein. Whenever any claim is made for an exemption from attachment pursuant to this subsection, the burden shall be upon the plaintiff to prove that the contract or transaction involved in the case was entered into within the District of Columbia.

(d) A notice of claim of exemption, or motion to quash attachment or other process against exempt property or money, may be filed in the office of the clerk of the court either by the debtor, his spouse, or a garnishee. Thereupon, the court, after due notice, shall promptly act upon the notice, motion, or other claim of exemption. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1; Oct. 21, 1970, 84 Stat. 1066, Pub. L. 91-475; 1973 Ed., § 15-503.)

Section references. — This section is referred to in § 20-904.

Individual retirement account of District resident. — While District of Columbia law does exempt from attachment an individual retirement account of a person residing in the District or those who earn a major portion

of their wages there, it does not extend that protection to those living or working outside the District. *Johns v. Rozet*, 826 F. Supp. 565 (D.D.C. 1993).

Cited in *Roberts & Lloyd, Inc. v. Zyblut*, 122 WLR 2157 (Super. Ct. 1994).

Subchapter II. Trial of Right to Property Seized on Process of Superior Court.

§ 15-521. Notice of claim or exemption; trial.

When personal property taken on execution or other process issued by the Superior Court of the District of Columbia is claimed by a person other than the defendant therein, or is claimed by the defendant to be property exempt from execution, and the claimant gives written notice to the marshal of his claim, or the defendant gives notice, in writing, that the property is exempt, the marshal shall notify the plaintiff of the claim and return the notice to the court, and a trial of the right of property, or the question of exemption, shall be had before the court. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(8)(A)(i); 1973 Ed., § 15-521.)

Section references. — This section is referred to in §§ 15-522 and 15-523.

§ 15-522. Docketing of claim; manner of trial.

The case made by the claim referred to in section 15-521 shall be entered on the docket as an action by the claimant or the defendant against the plaintiff and tried in the same manner as other cases before the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(8)(A)(i); 1973 Ed., § 15-522.)

§ 15-523. Judgment.

If the property referred to in section 15-521 appears to belong to the claimant or to be exempt from the process, judgment shall be entered against the plaintiff for costs, and the property levied upon shall be released. If the property does not appear to belong to the claimant or to be exempt, judgment shall be entered against the claimant or the defendant as the case may be, for costs, including additional costs occasioned by the delay in the execution of the writ. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1; 1973 Ed., § 15-523.)

§ 15-524. Replevin against officer.

This subchapter does not prevent a claimant other than the defendant from bringing an action of replevin against the officer levying upon the property claimed as described in this subchapter. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1; 1973 Ed., § 15-524.)

CHAPTER 7. FEES AND COSTS.

Sec.	Sec.
15-701. Compensation taxed as costs; attorneys' compensation from clients.	15-711. Deposit or security for costs in Superior Court.
15-702. Attorney fees taxed as costs.	15-712. Proceedings in Forma Pauperis.
15-703. Security for costs by nonresidents.	15-713. Deposits for jury trials in Superior Court.
15-704. Advance payment of costs and fees.	15-714. Witness fees for attendance in Superior Court.
15-705. Exemption of District of Columbia and United States from fees, costs, and bonds.	15-715. Witness fees in prosecutions for cruelty to children or animals.
15-706. [Repealed].	15-716. [Repealed].
15-707. Probate fees.	15-717. Marriage license and related fees.
15-708. Deposit for probate fees.	15-718. Juror fees.
15-709. Fees and costs in Superior Court.	
15-710. [Repealed].	

§ 15-701. Compensation taxed as costs; attorneys' compensation from clients.

(a) Except as otherwise provided by law, only the compensation specified in this chapter may be taxed and allowed to attorneys, proctors, United States attorney, marshal, witnesses, and jurors.

(b) This chapter does not prohibit attorneys and proctors from charging or receiving from their clients other than the government such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage or may be agreed upon. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1; 1973 Ed., § 15-701; June 19, 1986, 100 Stat. 633, Pub. L. 99-336, § 4(b)(1).)

Cross references. — As to fees of notaries public, see §§ 1-813 and 1-814.

Application of Pub. L. 99-336. — Section 4(c) of Pub. L. 99-336 provided that the amendments made by this section shall apply with respect to any civil action, suit, or proceeding instituted on or after June 19, 1986.

Attorneys' fees may be awarded for services performed on appeal. Hannon v. Hannon, App. D.C., 220 A.2d 94 (1966).

And may be considered in awarding punitive damages. — When a court, rather than awarding attorneys' fees as costs, merely considers such fees as one factor in its final assessment and imposition of punitive damages, such a damage award will not be disturbed on appeal

when there has been protracted litigation, together with a finding of malicious and wanton conduct on the part of the losing party. Town Ctr. Corp. v. Chavez, App. D.C., 373 A.2d 238 (1977).

Party wrongfully involved in litigation with third party. — A well-recognized exception to the American rule — that each party bear his own expenses of litigation — allows a party wrongfully involved in litigation with a third party to recover from the wrongdoer the expenses of such litigation, including attorney's fees. Safeway Stores, Inc. v. Chamberlain Protective Servs., Inc., App. D.C., 451 A.2d 66 (1982).

§ 15-702. Attorney fees taxed as costs.

An attorney for the District of Columbia may not retain attorney fees taxed as costs in litigation in which the District of Columbia is a party. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1; 1973 Ed., § 15-702; June 19, 1986, 100 Stat. 633, Pub. L. 99-336, § 4(b)(2).)

Section references. — This section is referred to in § 15-709.

Application of Pub. L. 99-336. — See note to § 15-701.

§ 15-703. Security for costs by nonresidents.

(a) The defendant in a suit instituted by a nonresident of the District of Columbia, or by one who becomes a nonresident after the suit is commenced, upon notice served on the plaintiff or his attorney after service of process on the defendant, may require the plaintiff to give security for costs and charges that may be adjudged against him on the final disposition of the cause. This right of the defendant does not entitle him to delay in pleading, and his pleading before the giving of the security is not a waiver of his right to require security for costs. In case of noncompliance with these requirements, within a time fixed by the court, judgment of nonsuit or dismissal shall be entered. The security required may be by an undertaking, with security, to be approved by the court, or by a deposit of money in an amount fixed by the court.

(b) A nonresident, at the commencement of his suit, may deposit with the clerk such sum as the court deems sufficient as security for all costs that may accrue in the cause, which deposit may afterwards be increased on application, in the discretion of the court. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1; 1973 Ed., § 15-703; June 19, 1986, 100 Stat. 633, Pub. L. 99-336, § 4(b)(3).)

Cross references. — As to fees and costs in Superior Court, see § 15-709.

As to fees and costs in Small Claims and Conciliation Branch of Superior Court, see §§ 16-3903 and 16-3909.

Section references. — This section is referred to in § 15-711.

Application of Pub. L. 99-336. — See note to § 15-701.

§ 15-704. Advance payment of costs and fees.

Costs and fees for services rendered by the Register of Wills and chargeable to others than the United States or the District of Columbia are payable in advance and shall be collected pursuant to such rules and regulations, not incompatible with law, as are prescribed by the court. (Dec. 23, 1963, 77 Stat. 532, Pub. L. 88-241, § 1; 1973 Ed., § 15-704; June 19, 1986, 100 Stat. 633, Pub. L. 99-336, § 4(b)(4).)

Cross references. — As to liability for costs in suits against Board of Education, see § 31-101.

Application of Pub. L. 99-336. — See note to § 15-701.

§ 15-705. Exemption of District of Columbia and United States from fees, costs, and bonds.

(a) The District of Columbia or any officer thereof acting therefor may not be required to pay court costs or fees in any court in and for the District of Columbia.

(b) The District of Columbia may not be required to pay fees to the clerk of the United States Court of Appeals for the District of Columbia, or to the marshal of the District, and is entitled to the services of the marshal in the service of all civil process.

(c) The United States and the District of Columbia may not be required to pay fees and costs for services rendered by the clerk of the United States District Court for the District of Columbia and the Register of Wills.

(d) Neither the United States nor the District of Columbia, nor any officer of either acting in his official capacity, may be required to give bond or enter into undertaking to perfect an appeal or to obtain an injunction or other writ, process, or order in or of any court in the District of Columbia for which a bond or undertaking is required by law or rule of court. (Dec. 23, 1963, 77 Stat. 532, Pub. L. 88-241, § 1; 1973 Ed., § 15-705.)

Section applies only to costs or fees paid directly to court. — This section applies only to costs or fees paid by the government directly to the court, and not to reimbursement of a

party for costs incurred by that party. *Dillard v. Yeldell*, App. D.C., 334 A.2d 578 (1975).

Cited in *In re J.L.N.*, App. D.C., 557 A.2d 1313 (1989).

§ 15-706. Clerk's fees in United States District Court for the District of Columbia.

Repealed. June 19, 1986, 100 Stat. 633, Pub. L. 99-336, § 4(b)(5).

§ 15-707. Probate fees.

(a) Except as provided in subsection (b), the Register of Wills may demand and receive in advance for services performed by him such fees as shall be set by the court having jurisdiction over probate matters in the District of Columbia.

(b) Where the estate does not exceed \$500 in value the Register of Wills shall receive no fees, and where the estate does not exceed \$2,500 in value the fees may not exceed \$15. (Dec. 23, 1963, 77 Stat. 534, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(10)(A); Aug. 11, 1971, 85 Stat. 313, Pub. L. 92-88, § 3; 1973 Ed., § 15-707.)

§ 15-708. Deposit for probate fees.

For proceedings in probate deposits and fees shall be paid to the Register of Wills.

Upon the presentation for filing of a petition or a caveat to a will, he may require a deposit for his fees to be charged for the proceedings under the petition or caveat. Upon the deposit becoming exhausted in the liquidation of his fees so charged, he may require a further deposit from the original petitioner or caveator. The deposits may not be required in excess of fifteen dollars at any one time. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(11)(A); 1973 Ed., § 15-708.)

§ 15-709. Fees and costs in Superior Court.

(a) The Superior Court of the District of Columbia may prescribe fees and costs, including the fee to be paid for a jury trial.

(b) Fees for services by the United States marshals for processes issued by the Superior Court shall be prescribed by rules of that court. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(12)(A); 1973 Ed., § 15-709; June 19, 1986, 100 Stat. 633, Pub. L. 99-336, § 4(b)(6).)

Section references. — This section is referred to in §§ 15-713 and 16-703.

Application of Pub. L. 99-336. — See note to § 15-701.

United States to be served with motion

for free transcript. — Since, by motion for a free transcript, public funds may be expended, a copy of the motion should be served on the United States attorney. *McKelton v. Bruno*, App. D.C., 264 A.2d 493 (1970).

§ 15-710. Fees and costs in Domestic Relations Branch of Court of General Sessions.

Repealed. July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(13).

§ 15-711. Deposit or security for costs in Superior Court.

Nonresidents of the District of Columbia may commence suits in the Superior Court of the District of Columbia without first giving security for costs, but upon motion may be required to give security pursuant to section 15-703. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(14); 1973 Ed., § 15-711.)

§ 15-712. Proceedings in Forma Pauperis.

(a) Any District of Columbia court may authorize the commencement, prosecution or defense of any non-criminal suit, action or proceeding, or appeal therein, without prepayment of fees and costs or security therefor, including the fees for transcripts on appeal, by a person who is unable to pay such costs or give security therefor without substantial hardship to himself or herself or his or her family, as established by affidavit or other proof satisfactory to the court.

(b) Any person who makes an affidavit as provided in subsection (a) and states therein that he or she receives public assistance under the District of Columbia Aid to Families with Dependent Children or General Public Assistance Programs, or receives assistance under Title XVI of the Social Security Act (Supplemental Security Income) (76 Stat. 197) shall be presumed eligible to proceed without prepayment of fees and costs or security therefor. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(14); 1973 Ed., § 15-712; Apr. 7, 1977, D.C. Law 1-107, title II, § 202, 23 DCR 8737.)

Legislative history of Law 1-107. — Law 1-107, the "District of Columbia Marriage and Divorce Act," was introduced in Council and assigned Bill No. 1-89, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on amended first

readings on July 27, 1976 and September 15, 1976, and second readings on November 22, 1976 and December 7, 1976. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-193 and transmitted to both Houses of Congress for its review.

References in text. — Title XVI of the Social Security Act, referred to in subsection (b) of this section, is Title XVI of the Act of August 14, 1935, ch. 531, as added by the Act of October 30, 1972, 86 Stat. 1465, Pub. L. 92-603, § 301, which is classified to 42 U.S.C. § 1381 et seq.

Legislative intent. — Congress intended in enacting this section that rich and poor alike should have equal access. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

Intent of this section is to make available to the indigent, in common with his fellow citizen, the full range of civil remedies contrived by court or legislature. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

Relief not limited. — In forma pauperis relief is not limited to those who are public charges or absolutely destitute. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

Criteria in passing on applications. — It is an abuse of discretion for trial courts to use criteria in passing on in forma pauperis applications that in effect set up more restrictive grounds than are prescribed by statute. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

Construction of section. — Section should be construed to permit indigents to proceed in good faith with nonfrivolous claims for divorce. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

Payment of costs or security not required. — Trial court erred in requiring women whose income was derived solely from public assistance to pay \$20 court costs or posted security as a condition of proceeding in forma pauperis. *Green v. Green*, App. D.C., 562 A.2d 1214 (1989).

Indigents not hereby absolved from ultimate responsibility for costs. — Leave to proceed in forma pauperis does not absolve a party from the ultimate responsibility of paying the costs of litigation. *Robinson v. Howard Univ.*, App. D.C., 455 A.2d 1363 (1983).

Assessment of costs against in forma pauperis party at conclusion of suit permitted. — Although this section, unlike the comparable federal statute, 28 U.S.C. § 1915, contains no provisions expressly permitting the courts to assess costs against an in forma pauperis party at the conclusion of a suit, this omission is not significant in light of the established practice of the courts in assessing costs against indigent plaintiffs proceeding in forma

pauperis. *Robinson v. Howard Univ.*, App. D.C., 455 A.2d 1363 (1983).

This section does not provide for the denial of in forma pauperis status based upon the lack of merit of the underlying action. *Lewis v. Fulwood*, App. D.C., 569 A.2d 594 (1990).

Finding of malice or bad faith not prerequisite to such assessment. — A court is not required to make a finding of malice or bad faith in order to assess costs against a party proceeding without prepayment of costs under this section. *Robinson v. Howard Univ.*, App. D.C., 455 A.2d 1363 (1983).

Section does not exclude divorce actions. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

Publication costs not covered by section. — The costs of publication are paid to newspapers and not to an arm of the court and are not one of the costs covered by this section. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

When publication is required, the court, unless the situation otherwise dictates, should order publication only for the minimum number of times fixed by statute and in the most economical form of suitable publication. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

Indigents are not required to pay minimum attorney's fees set by court rules. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

Right to free transcript on appeal. — The United States must pay for transcripts for indigent litigants allowed to appeal in forma pauperis to the District of Columbia Court of Appeals if a trial or appellate judge certifies that the appeal raises a substantial question the resolution of which requires a transcript. *Lee v. Habib*, 424 F.2d 891 (D.C. Cir. 1970).

Doubts about substantiality of the questions on appeal and need for a free transcript to explore them should be resolved in favor of the petitioner. *Lee v. Habib*, 424 F.2d 891 (D.C. Cir. 1970).

Judges should give due consideration to motions for free transcripts in cases where the law appears to be settled but where the appellant is able to show that his chances of changing the law on appeal are strong. *Lee v. Habib*, 424 F.2d 891 (D.C. Cir. 1970).

Cited in *Cabillo v. Cabillo*, App. D.C., 317 A.2d 866 (1974); *In re J.L.N.*, App. D.C., 557 A.2d 1313 (1989).

§ 15-713. Deposits for jury trials in Superior Court.

Deposits made on demands for jury trials in accordance with rules prescribed by the Superior Court of the District of Columbia under authority granted in section 15-709 shall be earned unless, prior to three days before the time set for trial, including Sundays and legal holidays, a new date for trial is set by the court, cases are discontinued or settled, or demands for jury trials are waived. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(14); 1973 Ed., § 15-713.)

§ 15-714. Witness fees for attendance in Superior Court.

(a) The fees and travel allowances to be paid any witness attending in a criminal case in the Superior Court of the District of Columbia shall be the same as those paid to witnesses who attend before the United States District Court for the District of Columbia.

(b) The fees and travel allowances to be paid any witness compelled by subpoena to attend any branch of the Superior Court of the District of Columbia other than the criminal division shall be the same amount as paid a witness compelled to attend before the United States District Court for the District of Columbia.

(c) No travel allowance shall be paid to any witness residing within the District of Columbia. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1; Dec. 27, 1967, 81 Stat. 742, Pub. L. 90-226, title VIII, § 803(a); July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(15)(A); 1973 Ed., § 15-714.)

Cross references. — As to per diem and mileage fees for witnesses in United States courts, see 28 U.S.C. § 1821 et seq.

As to fees of jurors serving in Superior Court, see § 11-1906.

Section references. — This section is referred to in § 11-1527.

Cited in Burns v. Greater S.E. Community Hosp., 119 WLR 1869 (Super. Ct. 1991).

§ 15-715. Witness fees in prosecutions for cruelty to children or animals.

An officer or member of the Humane Society is not entitled to any fee as a witness in the prosecution of a case of cruelty to children or animals. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1; 1973 Ed., § 15-715.)

§ 15-716. Advances to Court of General Sessions Clerk for witness fees.

Repealed. July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(16).

§ 15-717. Marriage license and related fees.

For each marriage license, the fee shall be \$2; for each certified copy of a marriage license return, the fee shall be \$1; for each certified copy of application for marriage license the fee shall be \$1; and for registering authorizations to perform marriages and issuing certificate, the fee shall be \$1.

The Superior Court of the District of Columbia may, by rule of court, increase or decrease fees provided by this section. (July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 13(d)(2); July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(17); 1973 Ed., § 15-717.)

§ 15-718. Juror fees.

(a) A juror serving in the Superior Court of the District of Columbia shall be paid an attendance fee of \$30 for each day of actual attendance at the place of trial or hearing, except that jurors employed by a federal, state, or local government or by a private employer who pays regular compensation during the period of jury service shall not be paid an attendance fee. A person summoned for petit jury service in the Superior Court of the District of Columbia who does not serve on the petit jury shall not be paid an attendance fee.

(b) A travel allowance not to exceed \$2 per day shall be paid to all jurors serving in the Superior Court of the District of Columbia.

(c) For jury service of 5 days or less, petit or grand jurors employed full-time in the District of Columbia shall be entitled to their usual compensation less the fee received for jury service. A person shall not be considered a full-time employed juror on any day of jury service in which that person:

(1) Would not have accrued regular wages to be paid by the employer if the employee were not serving as a juror on that day; or

(2) Would not have worked more than 1/2 of a shift that extends into another day if the employee were not serving as a juror on that day. Employers with 10 or less employees shall not be required to pay a juror-employee his or her usual compensation.

(d) If an employer fails to pay an employee in violation of subsection (c) of this section, the employee may bring a civil action for recovery of wages or salary lost as a result of the violation. If an employee prevails in an action under this subsection, that employee shall be entitled to reasonable attorney fees fixed by the court. (Mar. 9, 1988, D.C. Law 7-81, § 2(c), 34 DCR 8115; Aug. 17, 1991, D.C. Law 9-19, title I, § 104, 38 DCR 4066; Aug. 17, 1991, D.C. Law 9-43, § 2, 38 DCR 4985; Aug. 25, 1994, D.C. Law 10-156, § 2, 41 DCR 4876.)

Effect of amendments. — D.C. Law 10-156 added (c) and (d).

Legislative history of Law 7-81. — Law 7-81, the "Juror Fees Act of 1987," was introduced in Council and assigned Bill No. 7-125, which was referred to the Committee of the Judiciary. The Bill was adopted on first and second readings on November 10, 1987 and November 24, 1987, respectively. Signed by the Mayor on December 10, 1987, it was assigned Act No. 7-116 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-19. — Law 9-19, the "Omnibus Budget Support Temporary Act of 1991," was introduced in Council and assigned Bill No. 9-205. The Bill was adopted on first and second readings on May 7, 1991,

and June 4, 1991, respectively. Signed by the Mayor on June 21, 1991, it was assigned Act No. 9-43 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-43. — Law 9-43, the "Juror Fees Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-165, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-80 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-156. — Law 10-156, the "Jury Fee Act of 1994," was introduced in Council and assigned Bill No. 10-41,

which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July

8, 1994, it was assigned Act No. 10-272 and transmitted to both Houses of Congress for its review. D.C. Law 10-156 became effective on August 25, 1994.

